Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
Rome: Typis Polyglottis Vaticanis, Vol. 22 (1889–1890)

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[*Latin ed. p. 1*]

ACTS OF THE HOLY SEE, Volume XXII. A conveniently arranged and illustrated compendium, prepared with care by Victor Piazzesi, Doctor of Both Laws. Namely, the legal and more solemn acts emanating directly from the Supreme Roman Pontiff: acts among those which can be made public under the law, whether they are Decrees, Instructions, Responses, or other similar matters; especially, expositions and resolutions of cases from the various Sacred Congregations of Cardinals, contributing to a careful understanding and observance of ecclesiastical law, carefully compiled in a concise form: and finally, other legal matters, by which those things which may present difficulty in the aforementioned acts are suitably explained, or which further contribute to the knowledge of the current law: for the benefit of those who diligently study the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the Lord's vineyard.

ROME, FROM THE PRINTING PRESS OF THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 1889-90.

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111 Fifth Avenue, New York, N.Y. 10003

Berkeley Square House, London, W1X6BA.

[*Latin ed. p. 3*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF FOROIULI and NICE, or AQUBN. LEGATES, Session 7, "ap. 7 Ds reform. Die 15 Decembris 1888. SUMMARY OF FACTS. The priest Sauvaire, born in the village of Brianbonnet near St. Albanum in the district of Grasse, having decided to convert his possessions to pious causes, while still alive, donated 10,000 livres to the small seminary of the place, Grasse, whose administration he had directed for many years, and he ordered that from the income, the same amount be established as pensions for the education of students, so that this favor might be granted, if possible, to young men from Briançonnet... and, in their absence, to young men from St. Albanum... Furthermore, he gave 50 chirographarias obligations, commonly called Lombard bonds, to the large seminary of Foroiuli, of which he had also been the director for several years, with the stipulation that 1. The Bishop of Foroiuli should hand over 200 livres to the parish of Briançonnet; 2. that, from what remained of the income from the obligations, an amount should be given for the education of one, or two, young men from the

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small seminary of Grasse; who would continue to enjoy this favor until they entered the large seminary. However, by a consistorial decree of June 12, 1886, the district of Grasse was separated from the Diocese of Foroiuli and incorporated into the Diocese of Nice, together with its people and all "ecclesiastical benefices, pious institutions, and attached things." Among the various difficulties that arose from this, one was this, which concerns us here. Indeed, the Bishop of Nice requested that the 50 chirographarias be returned which the priest Sauvaire had bequeathed to the large seminary of Foroiuli; but the Bishop of Foroiuli refused.

[*Latin ed. p. 4*]

CONCERNING CERTAIN MATTERS. To resolve the dispute, the Ordinary of Nice proposed, on April 28, 1887, an arbitration to the other party; and I, he said, grant the Bishop of Fori Iulii the power to choose an arbitrator, either the Archbishop of Aix, or the Bishop of Avignon, or the Ordinary of Marseilles. After almost two months, and precisely on June 23, 1887, the Bishop of Fori Iulii responded, stating that, exercising the power granted to him by the other party, he chose the Metropolitan of Aix, and added: he would consult with him about this matter the following day. The Prelate of Nice, who at that time was visiting his new district of Grasse, as he himself affirms, did not receive these letters until three or four days later, that is, on June 26th or 27th. In the meantime, however, the Metropolitan Archbishop became aware of the documents presented by the Bishop of Fori Iulii, and immediately, on June 30th, without considering the arguments of the other party, he rendered an arbitral judgment, which is contained in a certain decree addressed to the Bishop of Fori Iulii himself. In it, after certain considerations, he decided as follows: the Bishop of Fori Iulii shall pay the sum equivalent to 200 *libellae* for the parish of Briançonnet; and furthermore, two of the aforementioned obligations must remain in force, so that the 200 *libellae* may remain intact for a long time, free from any tax imposed by the government; the other obligations must remain in force, according to the wishes of the Ordinary of Fori Iulii for the benefit of the seminaries of that diocese. This decision was not communicated to the Bishop of Nice until 11 days later, and indeed, it was announced to him by the Bishop of Fori Iulii, who received the news with great astonishment, and therefore immediately wrote to the Vicar General of Fori Iulii: "the questions have not been resolved in this way... and it seems permissible to me to protest, despite due respect for the persons involved, because the procedure seems new and irregular." He then also protested to the Archbishop, who, however, did not retract from the judgment he had rendered. Therefore, he appealed to the Holy See, intending to raise the question concerning the value

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of Laudi, both with regard to the form and with regard to the substance.

[*Latin ed. p. 5*]

FOROIULIEN. ETC. 5. A SYNOPTIC DISCUSSION. DEFENSE OF THE BISHOP OF NICE. The advocate of this party observes, first of all, that, according to established law, a judgment rendered in Lodi possesses the force of a judicial sentence, and therefore gives rise to a true and proper exception of *res judicata*; but that, in order for this exception to be valid, it must be demonstrated that the arbitral sentence was legitimately issued (1). But on this very point, the arbitrator himself reveals his opinion, judging the strength of his own sentence: "If it pleases you to agree with the Bishop of Foroiulien to choose another judge, it will be good; for I have performed the work of equity and conciliation." But since the validity of a work is to be measured not by the author's opinion, but by the law, we already know from the law that an arbitration cannot exist without a *compromissum*; and if this is lacking, although it may be a specimen of agreement, the arbitration is not perfected. Thus, Reiffenstuel writes in *lib. 1 tit. 43 p. 1 n. 4*: "He who, of his own accord and without a prior *compromissum* made with him, reconciles those who are discordant among themselves, and peacefully, is rightly called a friendly mediator, but not an arbitrator, and this because of the lack of a *compromissum*." However, as Devoti Inst. can. *lib. 3 tit. 17 p. 5* writes: "A *compromissum* is an agreement by which those who are in dispute submit their controversy to the judgment of someone, and promise to abide by the sentence of the arbitrator." Therefore, every *compromissum* consists of the form of a Convention and a particular substance, and it must be accepted by the arbitrator. Furthermore, concerning 1. the form of the *compromissum*, although, according to Schmalzgrueber, *tom. II part. 5 tit. 43 p. 2 num. 21* var., there are various ways of making a *compromissum*, namely either by word, or by gestures, or by letter; or by a bare agreement, or with an intervening stipulation; or without the addition of a penalty, or with a penalty added with an oath or without it; nevertheless, in truth, only a *compromissum* stipulated in writing is necessary (1). *Iteróle Venetiarum. Laudi...., Vol. XVI, 104.*

[*Latin ed. p. 6*]

6. FOROIULIEN. ETC. It creates an obligation. Thus, I, 4, p. 1, C. II, 56. The Gregorian Law (commonly called the "regulation"), which approves the rule of Roman law, states on page 1749: "A compromise is made either by a public act or by a private writing." Furthermore, if there is no stipulation, even if the parties have agreed to submit the matter to arbitration, the judgment of the arbitrators should be considered a "sample of conciliation," rather than a true arbitral judgment, according to what is stated by Schmalzgrueber, in the aforementioned work. "If a compromise is made by a bare agreement, no effective obligation or action arises in a foreign

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forum. Indeed, even if a stipulation is included, but without the addition of a penalty and an oath—no action or exception based on the principle of res judicata arises after a judgment has been rendered by the arbitrator, I. From the aforementioned judgment, C. h. t. etc." With these points established, it is clear that there was no valid compromise between the prelates of Nice and Foroiuli, since not only was there a lack of a stipulation by a public or private writing, the addition of an oath and a penalty, and a specified date for the pronouncement of the judgment, but also a mutual agreement between the parties. Indeed, the Bishop of Nice, on April 28, 1887, generally and without any of the conditions required by law, proposed arbitration. The Bishop of Foroiuli replied on June 23, stating that he had chosen the Archbishop of Aix for this purpose; and the matter did not proceed further, when the Bishop of Nice, with incredible astonishment, received news shortly thereafter of the judgment that had been rendered. But, what is more, it should be noted that the Bishop of Foroiuli, upon receiving the letter of April 28, in which arbitration was proposed, first contacted the Bishop of Marseilles, and asked him to accept the arbitration; which the latter initially refused, but then completely accepted. Therefore, if the power of the Bishop of Foroiuli to designate an arbitrator had been sufficient for a valid election, the elected arbitrator would undoubtedly have been the Bishop of Marseilles, and consequently, the subsequent nomination of the Archbishop of Aix would have been unnecessary. Furthermore, according to the Gregorian Law, page 1754, a compromise will neither be valid nor effective unless it is accepted by the arbitrators. The acceptance of the arbitrators results either from their signatures—

[*Latin ed. p. 7*]

ARTICLE VII. The execution of the agreement, once completed in fact, or by another act which ought to be included... Furthermore, the Archbishop of Acqui did not, in any way, accept this or a similar proposal. Finally, the agreement must accurately describe the questions to be submitted to the judgment of the arbitrators, so that it may not exceed the predefined limits of its own purpose. Thus, ReifFenstuel, book 1, title 43, page 3, paragraph 59: "The power of the arbitrators is as great as that which has been attributed to them by the parties or by the judge in the agreement." However, one Bishop of Foro Julii acted with the Archbishop, and explained to him what he wished; while the other party was prejudiced, and neither appeared before the Arbitrator, nor communicated with him in writing. And indeed, the Archbishop of Acqui teaches this in a decretorial letter written as follows: "You have wished to choose me as an arbitrator; I gladly accept your mandate." Nor should it be said that the Bishop of Nice remained silent for several days after the publication of the judgment in Lodi, and thus confirmed the judgment, at least by tacit approval. For if the judgment was published on June 30th, it was only announced to

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the Ordinary of Nice on July 11th; who immediately wrote to the Vicar of Foro Julii, stating that the questions had not been resolved properly—and, notwithstanding the due respect for persons, he was permitted to issue a protest, because a new and irregular procedure had been observed. And then, on July 13th, writing to the Archbishop of Acqui, he recounted all the defects of the judgment. If I understand the letters correctly, he says, "I will submit, insofar as it is necessary, notwithstanding these things; but in the same context, he implies, I pray, 'Consider the importance of these points for the Episcopal Council.' Therefore, notwithstanding these things, he desires nothing other than 'to submit to you'; if the judgment is valid, if this Episcopal Council approves it, I will yield." Indeed, having received no response, he wrote another letter, asking the Archbishop to relinquish the mandate of arbitration. Furthermore, by approval, agreements can only strengthen the proceedings, and certainly not those which are defective, and which, for that very reason, are considered non-existent; Rota, cor. de Cursis, decision 292, paragraph 4.

[*Latin ed. p. 8*]

8. FOROIULI. ETC. Nec, iuxta Schmalzgrueber, loc. cit., n. 26: "Si partes nihil aliud in compromisso exprimerint, forma in arbitrio servanda est fere eadem, quae in iudicio; ideoque partes, contestari utrimque litem, iurari de calumnia et fieri alia debent, quae ad processum iudicialem pertinent. Ita omnes." Imo, et in arbitris, nulla solemni forma editis, praesentia partium est omnino necessaria; Rota coram Crescentio Sen. decis. II, De arbitris, n. 2, et in decis. 14, coram Buratto, num. 25. Adeo ut, si altera partium, licet vocata, iudicio sistere negligat, speciali iure receptum est, arbitrum sententiam edentem, nullum ferre iudicium. Ita expresse Voet ad ff. lib. 4 tit. 8 p. 15. Atqui in controverso hoc laudo aquensi, nulla fuit iuris regula adhibita, nullus ordo vel umbratilis figura iudicii. Post duos menses, Praesul foroiuliensis nuntiat Episcopo niciensi se arbitratimi acceptare, ac designare Archiepiscopum aquensem; postridie, ipsi Archiepiscopo arbitrale officium committit, et vix elapsis 5 diebus, prodiit laudum: partes in iudicium non sunt vocatae, defensiones non expectatae, nec dies ad eas instruendas concessa, aut ad pronuntiandum statuta; sententiam conficit Archiepiscopus inaudito episcopali consilio, quod expressis verbis niciensis Praesul petierat; editum arbitrium Episcopo tantum foroiuliensi communicatur, illud inscribens "lettre décision"; ac demum, pars quae arbitrum elegerat, quaestionem designaverat, defensionem constituerat, decisionem receperat, ipsamet post 11 dies alteri parti factum iudicium renunciat. Obiectioni vero quae fit, nempe niciensem Praesulem, accepta notitia de arbitri electione, et potuisse et debuisse statim respondere, sibique providere, respondet patronus retorquendo argumentum. Sane, ait, foroiuliensem Episcopum qui rogatus de arbitro seligendo a die 28 Aprilis ad 23 Iunii responsionem distulit, haud merito posse exigere, ut

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nunciata arbitri electione, quinque diebus altera pars nedum responderet, sed et omnia absolveret. Allegata enim pro se Dioecesis negotia, alteri etiam parti non deerant.

[*Latin ed. p. 9*]

FOROIULIEN. ETC. 9 Finally, the advocate places the ultimate flaw in the nullity in the fact that the Archbishop judged beyond what was requested. Indeed, the Bishop of Foroiuli had requested two-thirds of the thirty-five obligations, or at least twenty; and nevertheless, the judge ruled that all should be granted to the petitioner. Furthermore, the limits of the compromise define the jurisdiction, and the judge cannot exceed them; Rota decis. 14, in Annot. num. 46 cor. Buratto* Schmalzgrueber, loc. cit. n. 34* and DD. throughout. It is said that, concerning the Bishop of Foroiuli, recourse must be had to the Consistorial decree, by which new limits were established, and from which the Bishops of UskÃ¼b and Nice are requested to moderate amicably for the common good. Hence, the judgment was pronounced ex aequo et bono, and not according to strict law. For the advocate responds that the Consistorial decree nowhere forbade the discussion of justice, but rather contains article 8: "If any difficulty should arise, it shall be referred according to the canonical laws to the A. S. [Apostolic See], to whom it will belong to declare, amend, or settle, or to settle with civil authority." Therefore, since nothing prevents the Most Reverend Prelates from coming to a judgment on the merits of the case, the advocate proceeds to the second part of his argument, and recalls that the priest Sauvaire, who had already accumulated a considerable annual sum for the small seminary of the place, Grasse, donated, according to the very words of the Bishop of Foroiuli, fifty *syngraphae* in favor of the young men of the major seminary of Foroiuli. Furthermore, from these words it is clear that the bequest indeed concerns the seminary of Foroiuli; but accidentally and indirectly; for it directly and truly concerns the students who, having received their first instruction in the small seminary of the place, Grasse. Furthermore, such students, who previously entered the seminary of Foroiuli, after the place of Grasse was separated from the Diocese of Foroiuli, were necessarily to pass to the seminary of Nice, with all rights and revenues.

[*Latin ed. p. 10*]

10. FOROIULIEN. ETC. It is well known that this is a consequence of the division of jurisdiction, as Saint Rota taught in decision 234, number 6, part IV, volume 1, stating: "The division of jurisdiction operates in such a way that the places and persons from whom jurisdiction has been withdrawn are considered to belong to the territory and are subject to that jurisdiction to which it has been transferred." This principle was affirmed in the following terms by the consistorial decree, article 3: "Both men and women,

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together with their surrounding places, ecclesiastical benefices, pious institutions, and attached properties, shall be incorporated into the Diocese of Nice and shall be permanently subject to it." Therefore, even the disputed legacy of Sauvaire, as a matter of personal jurisdiction, must pass with the persons to the new province of jurisdiction. This point was not contested by the bishops of Acqui and Nice. Nevertheless, the advocate argued that both eminent prelates contended that the principles they acknowledged could not be applied in this case. For the Bishop of Foroiulien wrote: "This matter cannot be treated juridically; therefore, it is fitting to pronounce a judgment based on equity and good will, and not according to strict law." And the Archbishop of Acqui stated: "The testator's will must be ascertained with certainty, and not the highest law." He added that the donor's intention was certainly to benefit certain poor young men by including them in the benefice, and also to confer a benefit on the Seminary of Foroiulien. But the advocate responds that this interpretation of the testator's will has no value; for what the founder certainly and directly intended was to benefit the clergy of his own place; and everything else was intended only indirectly and to a lesser extent, and must be considered accordingly. And secondly, it is objected that strict law cannot be applied in this matter; because it would lead to great damage, and therefore to great injustice, for the Diocese of Foroiulien: for it, having been deprived of the district of Grasse with its towns and richer places, would also lose this income. The advocate responds that in the district of Grasse there are eight parishes so barren and poor that they are called "New Siberia"; the wealthy, indeed...

[*Latin ed. p. 11*]

FOROIULIEN. ETC. It is the parish of the place Cannes; but this is burdened with 400,000 livres; and finally, the entire district, or rather, the small seminary of the place Grasse, owes 255,000 livres. DEFENSE OF THE BISHOP OF FOROIULIENSIS. There are two kinds of arbitrators, those who are necessary or by law, and those who are voluntary, or those who agree to it. The former are appointed by the judge or by the parties, according to the law. The latter are appointed by the free agreement or compromise of the parties. Furthermore, appeal is allowed from the judgment of a necessary arbitrator, but not from the judgment of a voluntary arbitrator. Cf. L. 1 cap. De arb. L. Diem prof erre p. Stari ff. De arb. et cap. Ab arbitris 11. De off. deleg, in VI. Indeed, he who, not by necessity, but solely by his own will, submits to arbitration, having omitted the competent judge, must bear the consequences if he is harmed. However, the Bishop of Nice submitted to the Metropolitan of Aquensem as an arbitrator. Nor does it matter if more than one was named; for when one has left the option of choosing one among them to the other party, and this party has chosen the Antistite of Aquensem, the compromise is valid, according to the clear text of L. 17, ff. IV, 8. It cannot be argued that the essential form prescribed

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in the judgment has been violated. For although the arbitrator, especially the necessary one, must proceed, observing the order of law in the essential matters; nevertheless, he does not do so entirely, nor in every respect. Thus, ReifFenstuel, in tit. De arbr., n. 23: "Although arbitrations are reduced to the form or semblance of judgments; nevertheless, this does not apply in all respects, but only when nothing else is specifically stated. Thus, the Glossa in the cited L. 1, ff., and the Abbot and others, throughout, proving this from the many differences that exist between a judge and an arbitrator." If it is objected that an essential part of the form has been completely omitted, because one of the parties was not heard, the first response is "that delay is harmful to everyone" and "that the damage which one suffers through his own fault, he must bear, not impute to others." Reg. 25 and 86 iur. in VI. These rules seem to be very appropriate to the case.

[*Latin ed. p. 12*]

12 FOROIULIEN. ETC. If it is true that the Bishop of Nice had knowledge of the elected arbitrator no later than June 27th, and that the other party had informed him of this, and that he did nothing, nor proposed reasons, nor requested a delay, but only on July 11th, when he was about to receive communication from Lodi, did he affix his hand to the document; then it is certainly valid to present the argument, as the opposing party does. For although the Bishop of Foroiuli delayed the definition of the matter from April 28th, when the proposal for the selection of arbitrators was made to him, until June 23rd, when he appointed an arbitrator, nevertheless, immediately upon receiving the proposal, he sent letters requesting a delay. Therefore, since the Bishop of Foroiuli had acted slowly, and in a matter of lesser urgency, it was also incumbent, nay, it was necessary, for the Bishop of Nice to act diligently in his own, more important and urgent matter. For the definitive constitution of the arbitrators was of greater importance than the remote request for a referral to arbitration. Therefore, let him bear the blame if he has suffered damage from his negligence. However, it cannot truly be said that the Bishop of Nice suffered a loss due to the omitted defense. Since the status of the matter was entirely simple, and was properly and completely reported by the Bishop of Foroiuli to the Archbishop. Certainly, the Bishop of Foroiuli did what the Bishop of Nice omitted through his negligence; but the arguments which he has presented here would have been of no avail. For, after the Archbishop became aware of these things, he considered them to be of lesser importance; and on July 20, 1887, he wrote to the Bishop of Nice from Lodi, again confirming the decision already made. From this, it is clearly affirmed that the defense advocated by the Bishop of Nice would not have averted the loss from his own side; but moreover, it is demonstrated that the Archbishop was entirely impartial in the matter. For, as he himself teaches, and as the Bishop of Foroiuli expressly confirms, the two Bishops did not even meet once before the

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judgment. But furthermore, from this document of the Archbishop, it is openly insinuated that he did not...

[*Latin ed. p. 13*]

FOROIULEN. ETC. It proceeded to Lodi, not merely by order, but after having first consulted with the court. From this, the second objection raised by Aversa regarding a violation of the form of the agreement also arises. It cannot be denied that the arbitrator may have exceeded the bounds of his mandate by granting one of the parties more than they had requested. However, as Reiffenstuel states in *De Arbitrio*, title 2, number 64, "the arbitrator can nevertheless know and pronounce on those things which are necessarily connected or related to the principal cause, so that this cannot be conveniently resolved without them, even if they are not expressly mentioned in the agreement." Therefore, it would seem that the agreement concerning Lodi is valid in form; and consequently, any disposition made regarding it, at least according to the strictness of Roman law, must be absolutely observed. Furthermore, L. Diem, in his *De Receptis*, pages 27 ff., states: "The judgment of the arbitrator, whatever he may have said about it, whether just or unjust, must be upheld; and the responsibility for it lies with the one who agreed to it." However, since, according to canonical equity, a remedy is available against an unjust agreement, namely rescission, sale, or exception of fraud, or something similar, it remains to be seen whether the disputed arbitration is valid in substance. Indeed, the party of Aversa argues that, from testamentary documents, it appears that the legacy accidentally and secondarily benefits the Seminary of Foroiulien, while it primarily and necessarily benefits the students of Grasse. However, if the letter and context of the foundation are examined more closely, it may be possible to conclude the opposite, and to reverse the proportion. Indeed, the donation of 50 obligations, although made with certain conditions and with attached burdens, was nonetheless truly made to the Bishop and the Seminary of Foroiulien. Moreover, it is not sufficient, for if the subsidy for the parish of Briançonnet was absolutely and simply ordered by the donor, it was not so with regard to the pensions for the students of Grasse; for with respect to them, the founder prescribed: "They shall enjoy this benefit if they enter the major seminary." Therefore, if they do not attend, they do not even have the right to the benefit, and the income from the legacy in this part accrues to the seminary. Consequently, it appears that the contro-

[*Latin ed. p. 14*]

14. FOROIULIEN. ETC. The phrase "versum legatum Grassenses alumnos" refers to the students of Grasse, but only hypothetically and accidentally, since it directly and properly pertains to the seminary. Nor can it be safely assumed that the testator, when speaking of the "great seminary," meant any seminary whatsoever; for the context of the speech, the condi-

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tion of his life, and the affection of the priest Sauvage, all clearly indicate that he meant nothing other than the seminary of Foroiulien when speaking in this way. Moreover, since Canon Sauvage had been for a long time the ancient rector of the great seminary of Foroiulien, and was connected to this diocese through his countless works, and through his knowledge of the burdens and needs of the same diocese, it can be reasonably assumed, even without the context, that the generous benefactor intended to favor his own diocese and his seminary of Foroiulien. Furthermore, "one must not consider words simply and literally, but the will and intention; for the intention must not be subservient to the words, but the words to the intention." *Ca. Humanae aures* 22, q. o. In this matter, both the meaning of the words and the intention and will of the speaker seem to concur; therefore, there is no room for doubt. The opposing side begins by saying that the testator's affection was primarily for his place and district of birth. However, he has benefited them, both separately and in this very pious donation of 5000 francs; therefore, it seems more credible that in this other part of the will, he primarily intended to benefit the great seminary. This is also confirmed by another reason. For it cannot reasonably be supposed that Canon Sauvage, who had been so liberal to his own place and district in which he was born, who had benefited the small seminary of the place of Grasse, would have shown no special sign of benevolence towards the great seminary in which he had been educated, where he had acquired a second and better life, which all men.

[*Latin ed. p. 15*]

FOROIULIEN. ETC. 15. Those matters which are frequently remembered, and which he himself had, moreover, supervised and regulated for many years, are now being considered. The Bishop of Foroiulium then presented the arguments thus far discussed, using the following words. After these preliminary remarks, the matter to be resolved was this: Whether the opinion of the Arbitral Tribunal of Acqui should be upheld; or, rather, whether the legate in question should be assigned to the Seminary of Nice in this case. RESOLUTION. The Sacred Congregation, having considered the matter, on December 15, 1888, decided to respond: Having been given fifteen obligations to the Ordinary of Nice for the endowment of the parish of Briançonnet, the remaining funds should remain with the Seminary of Foroiulium, with the obligation of paying four hundred livres annually to the Seminary of Nice, each time that one or more students are present from the Seminary of Grasse, according to the will of the testator. INFERAMNEN. FOURTH ANNIVERSARY. On February 16, 1889. Session 25, chapter 3, concerning reforms. SUMMARY OF THE CASE. Anthony Cecca, parish priest of Saint Cross in Interamna, in a suppliant letter presented to the Sacred Congregation, stated that, in this city, by an ancient and unchangeable custom, at the funerals of the

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deceased who are brought to the churches, where they have a family tomb, large candles belonging to the churches are brought; but that these candles are taken from the church that buries the deceased, and are brought by the association of the deceased to the church, and are placed near the body, to be lit only at the sung Mass for the repose of the soul and at the absolution. However, in recent years, some ignorant parish priests have allowed a certain wealthy family to arrange that four or more...

[*Latin ed. p. 16*]

16. ENTIRE. MEMORANDUM: Candles, besides those destined for the association, shall be lit around the body throughout the entire time of exposition in the Church. This occurred in the year 1886 at the funeral of Dominic Montani Leoni, who, although a parish priest, was carried to the Cathedral Church, where the sepulcher of his family is located. For the deceased's heirs, having arranged for thirty candles to be used for the funeral, added eight more, and wished that they be lit around the body until it remained exposed in the Church, with the knowledge of the parish priest. When the time came to divide the wax, the Chapter granted the parish priest half of the thirty candles, and the eight additional candles were not subjected to division, but were retained by the Chapter itself, as if they did not pertain to the funeral, but were rightfully due to the Church that held the burial, according to an unusual custom, as the Chapter stated. Therefore, the parish priest sought to have the fourth part of the funeral wax extended to these candles as well. The Chapter, however, refused. Consequently, it was decided to seek a resolution through concord. And in the pursuit of concord, the parish priest, knowing that something must be conceded on both sides, was prepared to renounce all disputed wax, both past and future, as long as he himself directed the parish of the Holy Cross, provided that, in turn, the parochial right be recognized by the Chapter. But the Chapter was willing to accept the parish priest's cession, yet wished to give nothing in return; and it seemed to them that they were granting much by reserving for themselves the possibility of exercising their right at a more opportune time. This, however, did not please the parish priest of the Holy Cross.

Synopsis of the Dispute: If one were to measure the merits of the case through written communication, it would certainly be judged in favor of the parish priest. For the Council of Trent, Session 25, Chapter 13, "De reform.," decrees: "In all places, let the defense of the parish priest be maintained for at least 40 years."

[*Latin ed. p. 17*]

INTERAMNEN. On the 17th of the month, which is designated as the funeral day, it is customary to pay [the tax] in the cathedral or parish church... And furthermore, henceforth, the entire amount and the same

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portion, which was previously customary, shall be paid to the cathedral or parish church. These, however, are the fourth [portion] or canonical amount, which is due from all that is offered by the heirs of the deceased, by reason of the funeral. Thus, chapter inter, all of chapter 1 De privil. inter extrav. com., Sixtus IV, Constitution Regimini; St. Pius V, Constitution; Even concerning the poor, and especially Benedict XIII, Constitution Romanus Pontifex, where these matters are precisely ordered: "Furthermore, by our full will, knowledge, and power, we decree and establish and command that, in Italy and the islands adjacent to it, from the day of publication onward, the parish priest shall receive and with effect be given the fourth part of all the offerings and candles, with which the deceased's body is accompanied on the way to the church where it is to be buried, as well as all the offerings and candles which are lit in that same church around the body, or even on the altars, on the day of the funeral. However, it is understood that the candles, which the priests, whether regular or belonging to pious confraternities, carry by hand along the way during the funeral, are excepted from this aforementioned fourth [portion]." And it should be noted that this funeral portion, which is due to the parish priest of the deceased from the church where the burial takes place, although it is called the fourth, because from the beginning, or even today, in some places, it constitutes a fourth part of all that which is offered by the heirs of the deceased, on the occasion of the funeral; nevertheless, it can be deduced from legitimate and reasonable custom that it is a third part, or even a half. Canon Antiquos 10 q. 1, cap. Explicari 9 De sepult, cum communi. Therefore, setting aside the name, in order to establish the amount of the fourth, Ferraris v. Quarta f un. n. 2 cum communi teaches that the legitimate and reasonable custom of each province and place must be taken into consideration. Indeed, in the case in question, it is beyond dispute that the parish priest of the deceased is due a half of the fourth [portion] according to canon law.

[*Latin ed. p. 18*]

18 INTERAMNEN. Concerning the wicks and tapers, which are carried in the funeral procession and burn around the tomb while the funeral rites are performed. Those, however, which are lit at the altars at the same time, contrary to the prescriptions of the Benedictine constitutions, are, according to received custom, entirely provided by the burying church, without any participation of the parish priest; and this is not disputed. Those, finally, which are lit around the tomb during the interval between the procession and the funeral rites, are entirely claimed by the cathedral church; while the parish priest of the deceased contends that these are subject to a fourth deduction, and that half of their cost is due to him. Now, let us come to the arguments which are advanced in this small matter, both for and against. First, the chapter recognizes that common law is contrary to

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its own rights; but, with the aid of certain witnesses, it argues that common law is entirely abolished by contrary custom. The witnesses who support the chapter are: a certain Possenti, the sacristan and treasurer of the cathedral, and three servants of the same cathedral, namely Peter and John Ghiggiotti, and Aloysius Davanti, and the mandate of the pious confraternity of the Misericordia. Finally, for the chapter, the rectors of the churches of St. Peter and St. Francis contend, which, apart from the cathedral, are the only churches in that city which have burial vaults and honor the dead. These witnesses cite certain cases to support the custom. Furthermore, the chapter notes in its letters that, if, by legitimate custom, it was possible to exempt the candles which are lit at the altars of the burying church on the occasion of a funeral from the fourth contribution, then, by the same legitimate custom, the tapers which burn around the bier at that time can also be exempt from the burden of contribution. Moreover, since custom, if long-standing, has the greatest force, especially in matters pertaining to funerals; Reiffenstuel I. 3 title 28, number 47, Sacred Congregation of Councils, in Macerata, July 18, 1699, and in Camerino, December 18, 1819. On the other hand, the parish priest of the Holy Cross maintains that common law is on his side.

[*Latin ed. p. 19*]

INTERAMNEN. As stated above in section 19, this practice has not been altered, except in the matter of candles lit at the altars, and certainly not in other respects. To support this, it is asserted that the custom of lighting several candles around the bier, during the time between the viewing and the funeral, has been in use for a few years, and this is confirmed by three documents: the parish priest of St. Christopher, the parish priest of the Most Holy Savior, and four sacristans of the churches of St. Jerome, St. Joseph, and St. John the Evangelist, as well as St. Cross. To these, the strongest support is added by the Ordinary himself, who, among other things, considers and affirms that, according to an ancient custom observed at burials, only one candle is lit from those lit around the coffin during the entire time the body is exposed in the church, and that this is one of the four candles belonging to the association, bearing the title of the cross and the coffin. It is reported that, for the first time in the funeral of Count John Manassei in the year 1860, the heirs of the deceased sent to the church, in addition to the candles for the association, other candles to be lit during the entire time the body was exposed. And since the parish church was also used for the viewing, the parish priest added the candles for the association. After this event, other cases occurred in which the families of the deceased requested that several candles be lit around the body during the time of viewing, in addition to those established for the association, and the churches involved added these candles, dividing the candles for the association with the respective parish priests. In this situation, the assertions to the contrary

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seem to contradict the ancient custom. For the matter concerns events that are said to have occurred only in recent years. This assertion, having been made by several witnesses who are qualified and not suspect, according to the parish priest of St. Cross, should certainly prevail over any other testimony, which comes either from the rectors of the other two churches involved in burials – of whom it is very important to restrict the rights of the parish priests – or from servants or the sacristan of the cathedral.

[*Latin ed. p. 20*]

20. INTERAMNEN. Those who are bound, either by reason of their office or for the common good, are subject to this rule. Furthermore, it is added that among these aforementioned rectors, one is a brother of that Possenti, who serves as the treasurer of the cathedral sacristy, and who shares meals with him; the other, namely, the rector of St. Peter, although today he testifies against the parish priest, nevertheless, from the beginning of the matter, openly declared that the parish priest of St. Cross has a just claim, just as two other parish priests of the city, St. Nicholas and St. Thomas, as stated in the letters included in the records, confess that they have heard the same. Moreover, the plaintiff, the parish priest, proves that the witnesses he presents are more reliable and deserving of greater consideration, by pointing out that they are among the esteemed members of the Ordinary, but two of them are parish priests, one of whom is St. Christopher, who is the elder and most distinguished among all the vicars of the diocese. Of the secular witnesses, only one can be excused from any obligation; for the first is only a member of the parish of St. Cross; the other three are subject to the full obligation. Regarding the parish priests, the plaintiff observes that they should be considered trustworthy, both because they are qualified and because they do not have burial places for their children in the cathedral church. But what is more important, the plaintiff argues, is that the testimonies from the side of the chapter are vague and uncertain, because they do not present any specific facts. Moreover, even for the two other churches, St. Peter and St. Francis, for which the two respective rectors testify, there is not a greater number of cases; for the plaintiff asserts that they can only present one case. Indeed, to prescribe, either in its entirety or in a specific quantity, for particular churches, the obligation of a fourth, requires a custom of forty years with a title, or an immemorial custom, as taught by Sylvester, *Verb. Canonica* portio* nos. 2 and 4; Barbosa *De off. et potest. Parochi* p. 3, c. 25, no. 16; Samuel *De sepulturis* tract. 1, Cont. 9, conci. 5; Schmalzgrueber *h. t.* § 8 no. 10.

[*Latin ed. p. 21*]

INTERAMNEN. 21. Ferraris, in opere citato, numero 3, stat: "Quarta funeralis, seu portio canonica, usque ad quartam inclusive, potest praescribi per decem annos, sine titulo; ad hoc autem, ut praescribatur infra

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quartam, vel ut nihil solvatur, consuetudo quadraginta annorum cum titulo, vel immemorabilis, est necessaria." Et in notis quae ab aliena manu huic operi adiectae sunt, haec ulterius adduntur: "Ecclesia cathedralis differt ab aliis ecclesiis quoad acquirendam praescriptionem exemptionem a solutione quartae funerariae. Ecclesia cathedralis, per quadraginta annos, acquirit exemptionem a solutione quartae funerariae; ceterae vero ecclesiae indigent immemorabili vel centenaria ad hanc acquirendam exemptionem." Rota in Barchinonen. Iurium parochialium, 9 Iulii 1732, coram Aldovrando. Quoad quantitatem quartae funerariae, adhibendum est consuetudini. Sed notabile est quod si ea praetendatur infra medietatem, sufficiunt decem annus praescriptionis; si autem ultra medietatem praetendatur, necessaria est praescriptio quadraginta annorum." Itaque Ferraris distinguit, et vult, portionem quartae per 10 annos praescribi, liberationem vero ab omnimoda quartae solutione per consuetudinem quadraginta annorum obtineri.

Verum, hoc est singulare; nam cum iura ecclesiarum, quaecumque illa sint, quadragenaria tantummodo praescriptione tollantur; et etiam portio quartae ius per 10 annos adimi potest: nec satis constat clarus auctor edicere ex quonam fonte suam sententiam promat; quapropter fidendum ei non videtur. Ex quibus, ut concludatur, deducitur actori parocho favere commune ius, cui derogatum non fuisse contenditur, quippe quia res est de consuetudine non quadragenaria, nec legitime praescripta, sed ex paucis casibus, nec in eodem loco, nec contra eamdem ecclesiam procedentibus. Haec omnia scripta et typis exarata iam erant, cum capituli nomine, eiusque causam tuiturus, patronus primum adstitit; at paulo post universum negotium compositum iri extemplo nunciatum est. Et revera actor parochus exemplar transactionis die 31 Decembris 1888 a partibus subscriptae ad S. C. C. transmisit, quae ita est:

[*Latin ed. p. 22*]

22. INTERAMNEN. Concerning a dispute that arose between the Parish Priest of Saint Cross and the Chapter of the Cathedral, regarding the relics of four candles from the eight which were continuously lit around the bier of Dominic Montani Leoni, it was unanimously agreed that, preserving the rights of each party, which each shall reserve to themselves to examine, as they deem fitting, half of them should be divided, that is, two should be given to the Parish Priest of Saint Cross and two to the Chapter of the Cathedral; and that in future, whenever such circumstances arise, until the question is resolved, a division shall always be made, according to the present agreement. However, since, due to the added clause of discretion, nothing definitive seemed to be established, it was deemed advisable to submit the entire matter to the judgment of the Most Reverend Fathers, in order that the discord, which arose from a small matter, and was said to be causing great scandal to the faithful, should not be prolonged. Hence,

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the following question was to be resolved: Whether the Cathedral Church, which buries the deceased, is obligated to provide the Parish Priest of Saint Cross with a fourth part of the funeral offerings, which are used during the time between the presentation and the funeral rites, and are lit around the bier in the case in question.

RESOLUTION. The Sacred Congregation, after deliberation on the 16th of February, 1889, decided to respond: Provided by the agreement.

FROM WHICH WE GATHER:

I. That, by law, Parish Priests of the deceased, who are buried in other churches, are due a fourth part of all the offerings, and of the candles which are lit on the day of the funeral around the body, or even on the altars.

II. That, by a reasonable and legitimate custom of the place, the portion of the funeral offerings which is due to the Parish Priest of the deceased may be such that the Church which buries the deceased provides a third part, or even half of all those offerings which are made by the heirs of the deceased on the occasion of the funeral, provided that, from the beginning, there was actually a fourth part.

[*Latin ed. p. 23*]

INTERAMNEN. March 23rd. It was determined that the fourth funeral offering was due to the parish priest of the Holy Cross, even concerning those matters which are customarily performed by a few individuals around the tomb during the time between the funeral procession and the burial; because in the matter at hand, a custom of forty years or longer could not override the common law. S. AGATHAE OF THE GOTHIC LAWS. On February 16th, 1889. Session 24, chapter 13, concerning reforms. SUMMARY OF THE CASE. The Bishop of S. Agathae Gothorum, through supplicatory letters, presented this matter to the Sacred Congregation for the Council and requested a definition: "In this city of Santagatha, there existed several parishes, which were governed by the chapter and its dignitaries." "To eliminate the numerous inconveniences that arose, the Bishop, with the consent of the entire chapter, reduced these parishes to two in the year 1736, and an agreement was made that these parishes would be administered alternately, one time by the Bishop, and the other time by the chapter, - while preserving and maintaining the parochial rights * which belonged to the Chapter." "Among other things, the canons, under this arrangement, 1. generally abstain from the choir and go to the confessional, leaving the choir deserted, and claim that they are not subject to the rules, as if they were mere curates." "2. They maintain that auricular confession is not to be given to them by the Bishop, but by the law, and therefore they cannot be deprived of this faculty." SYNOPTIC DISCUSSION. WHAT APPEARS TO FAVOR THE CANONS. As for the

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canons themselves, they completely defend their position, claiming to have been exempt from the care [of the choir] from time immemorial.

[*Latin ed. p. 24*]

24 Saint Agatha of the Goths possessed souls. For the Archdeacon administered the parish of Saint Agatha of Amarenis, the Primicerius administered the parishes of Saint Peter of Sterponibus and Saint Bartholomew of Ferrariis, the Treasurer administered the parishes of the Episcopate and Saint Mary of Futinis, and the Chapter, in its entirety, administered the parishes of Saint John in Curte and Saint Nicholas near the Living Rocks. Therefore, no one could obtain a canonry in the cathedral unless, first, he had proven, through examination, that he was fit to administer the care of souls, according to the decree of the Bishop, dated April 12, 1550, which reads as follows: "Henceforth, no one shall be admitted to a canonry, or to any office in this cathedral church, unless he has been found, before Us or Our Vicar, by diocesan examiners, to have a life of proven integrity... and who does not understand, to a degree beyond the mediocre, whatever he reads, so that he may be deemed fit for the administration of the Sacraments, with the understanding that this applies to those who hold benefices attached to the Chapter." And although, due to the very meager revenues of these parishes, Bishop Danza reduced the number to only two, it is said that the Chapter's rights were in no way diminished. He states in the aforementioned document: "These rights, We decree that they shall always remain safe, intact, and expressly reserved to the same Chapter." And indeed, even after the aforementioned Bull, the Chapter always and in a most eminent manner exercised the care of souls. This is evident from the Chapter's resolutions of the years 1764, 1765, 1775, 1804, 1833, 1834, 1873, 1880, and 1881, in which the Chapter delegated its Vicars, and removed them at its discretion; divided the city and rural houses into various parishes, increasing the number of some and decreasing the number of others; and established a titular canon, who would preside more closely over the care of souls in the name of the Chapter. Furthermore, they argue that the Chapter was responsible for the care of souls based on several facts which they call "notorious." They state, for example, that 1. to each new canon was granted possession of not only a stall in the choir, but also a confessional, and the Tabernacle, font of baptism, and the sacred oils; 2. the sacred font, and the holy oils for the baptisms, were kept by the canon.

[*Latin ed. p. 25*]

In the cathedral church of Saint Agatha in Agde, three canons are obligated to administer the sacraments and to preach the divine word, without any permission, either from the Bishop or, much less, from any vicars. Therefore, these canons consider themselves, by right, to be confessors, and are exempt from being summoned, if they receive the confessions of the

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faithful during the time of choral office. Furthermore, they allege the authority or testimony of Saint Alphonsus Mary of Liguori, who immediately succeeded Bishop Flaminio Danza in the governance of that diocese, and who, they claim, acknowledged the rights and duties of the chapter, which are now being asserted to have been removed by Bishop Danza. Writing to the confessors of Saint Agatha, the saintly man states: "I have understood with great sorrow that the people of Saint Agatha have greatly complained that your Reverences provide little assistance at the confessional. I remind them that a large part of the chapter's revenues, as they already know, comes from the revenues of the parishes; therefore, they already know that each of them has a joint obligation as a curate, so that when one is absent, the other is obligated. The fundamental obligation rests with each one, and it is an obligation of justice, because each one enjoys the goods of the citizens of Saint Agatha. The two parish priests are unable to satisfy the needs of the people. Therefore, the canons are obligated. But the canons, when it is time to hear confessions, go to the choir to say the office. The canons who are confessors must not only have care for the souls of Saint Agatha, and that for justice, but also out of charity for all the diocesans..."

(1) Furthermore, the canons say that the care of souls belongs to the chapter. (1) I have discovered, with great sadness, that the people of Saint Agatha have been greatly distressed because the Reverend Canons are present so little for hearing confessions. I remind them that a large part of the chapter's revenues, as they know, comes from the revenues of the parishes; therefore, they already know that each of them has a joint obligation of care; so that when one is absent, the other is obligated. The fundamental obligation rests with each one, and it is an obligation of justice, because each one enjoys the goods of the citizens of Saint Agatha. The two parish priests are unable to satisfy the needs of the people. Therefore, the canons are obligated. But the canons, when it is time to hear confessions, go to the choir to say the office. The canons who are confessors must not only have care for the souls of Saint Agatha, and that for justice, but also out of charity for all the diocesans.

[*Latin ed. p. 26*]

26. The Saint Agatha of the Goths was recognized and proclaimed by the Apostolic Nuncio, delegated by the Supreme Pontiff, to divide the Dioceses of Saint Agatha of the Goths and Acerra. For, in a decree of April 15, 1885, he stated: "Since the Most Holy Lord Our Pope has ordered and commanded... and has decreed that in this, the principal church, the number of five dignities and twenty-six canons must remain, along with all their honors and burdens; we declare that all these things must be observed and carried out to the letter, and especially those that pertain to the care of souls, which are attached to this chapter for the entire city and its surrounding area, and we confirm the vicars and confessors, by name and removable,

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appointed by the same chapter." The canons observe that, if they were to be subjected to certain restrictions, whenever they were occupied with choral office or receiving confessions, it would cause considerable harm to the faithful who, by custom, are accustomed to approach the Sacrament of Penance at that time, and would therefore receive the Sacrament less frequently; and furthermore, besides the canons, there are no other priests available as confessors. And the canons themselves would not be able to easily receive the confessions of the people at other hours, since many of them are dedicated to the education of young people in the diocesan seminary. Finally, they observe that there are only six confessionals in the cathedral church, of which two are designated for the Penitentiary and for the curate; therefore, only four confessionals remain for the canons, so that even if all were occupied simultaneously, which rarely happens, given that there are twenty-six or more canons, the service of the choir would suffer a noticeable loss. From these considerations of the chapter, it may perhaps be concluded that the opinion of the canons is not without a solid foundation in law. Indeed, with regard to the first part, namely, the right to receive the confessions of the faithful without the approval of the Ordinary, the canons seem to have the support of the Council of Trent, Session 23, Chapter 15, "De reformando," where the sacramental power...

[*Latin ed. p. 27*]

Saint Agatha of the Goths limits the practice of hearing confessions to parish priests and to priests specifically approved by the Bishop. Just as any priest, by virtue of being appointed a parish priest, is able to hear confessions without a special delegation or approval from the Bishop, so too must canons in a collegiate church be in the same condition, since they, at the very time they become canons, are also parish priests. Regarding the right of canons not to be subject to penances imposed by those who, while performing divine services, receive sacramental confessions, it should be noted that in the decree of Boniface VIII, beginning with "Consuetudinem," as related in chapter 1 of "De clericis non residentibus" in 6, three causes of excuse for absence from the choir are enumerated: namely, just and reasonable bodily infirmity, and evident benefit to the Church; which benefit to the Church seems to be able to extend even to the advantage of the people, since this clause has frequently been added in similar dispensations by the Holy Office, as in the case of Saint Minias on February 8, 1817, and in Tranen, on December 20, 1862. Furthermore, just and legitimate reasons can be introduced for a custom of being absent from the choir during divine services, and of not being subject to penances for this purpose, so that canons may be able to celebrate Mass, or to dedicate themselves to other spiritual ministrations for the benefit of the faithful, as is stated in Garda, "De beneficiis," page 3, chapter 2, paragraph 1, number 421; Antonelli, "De clericis non residentibus," I, 3, chapter 16, number 25; Moneta, "De distri-

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butionibus," part 2, question 11, number 52; Scarfantonius, "Ad Ceccoper," book 13, title 11, memories 13 and 14, where he says: "It is possible, for a just reason, to introduce a custom whereby canons, while celebrating divine services, receive distributions, for the entire service is divine." But what is more important, in the very chapter in question, the actual care of souls seems to be involved; therefore, all canons not only enjoy the rights of a parish priest, but are also obligated to be available for the administration of sacraments and other things necessary for the faithful. Indeed, it is clearly established in law.

[*Latin ed. p. 28*]

28 Of Saint Agatha of the Goths, it is understood that he who exercises the care of souls in a particular church, during the time that he performs his parochial duties, even if he does not participate in the Divine Offices, nevertheless receives the daily distributions; so that, indeed, the parochial service takes precedence over service in the choir, and a mere presence or apparent interest is considered sufficient for this purpose, so that he is not subject to penalties. This is derived from the Council of Trent, Session 22, Chapter 3, concerning reforms. Pope Benedict XIV, explaining this in the Council of Trent, loc. cit., taught in *Institutiones Ecclesiasticae*, 107, § 56, where he says: "He who has the care of souls in that church in which he is a canon, if he is occupied throughout the time in the exercise of those things which pertain to the care of souls, receives the daily distributions." This has also been confirmed by the Sacred Congregation in Isernien, February 27, 1597, and in Milan, February 13, 1639. Therefore, if canons, in such a case, hear sacramental confessions during the time of Divine Office, they ought to be considered as present in the choir and are not subject to penalties.

WHAT APPEARS TO BE AGAINST THE CANONS. On the other hand, it must be noted that before the year 1731, or before the decree of Bishop Danza, the dignities and the chapter administered the individual parishes; but, after that year, the rights of the dignities and the chapter, and whatever else had been before, were greatly changed. Indeed, on June 11, 1736, the Archdeacon, urged by the exhortations of the Ordinary, first came forward and renounced the parish of Saint Agatha of Amarenis, stating his own position as follows: "Before me, etc., appeared the Archdeacon, etc., and stated that he was invested with the aforementioned parochial church, and that because he is obligated to appoint an economist, and for just reasons, is especially occupied in the aforementioned cathedral, he cannot assist in the administration of said parish, which has the following revenues, besides the tithes, etc. Therefore, he surrenders the aforementioned parochial church into the hands of his Most Reverend Bishop in this Holy Visitation, especially because the revenues are small, which are not sufficient for the economist, and he himself obtains his livelihood elsewhere; therefore, he

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requests that it be annexed from now on."

[*Latin ed. p. 29*]

Saint Agatha of the Goths, and subsequently, following the aforementioned union and annexation, having attentively considered the declaration made by him, resolved to permanently unite and incorporate the aforementioned benefits, and to relinquish them, and to provide for another parish priest, or to annex them to others, preserving what is to be preserved. > On the same day, the Primicerius, the Thesaurarius, and finally the chapter, issued a similar declaration for their respective parishes, and were subsequently unanimously approved, so that two parishes would be established from all these parishes, one in the church of Saint Angel, the other in the Cathedral, and that special rectors would be appointed in them "who would administer the sacraments to the parishioners more conveniently" and would be provided for in a sufficient and appropriate manner, "beyond the emoluments of tithes, the alb and black vestments," as is stated in the episcopal bull, by which the Prelate sanctioned this new arrangement of parishes. Furthermore, all these things suggest that the chapter and the dignitaries completely withdrew from the actual care of souls from that time. This seems to derive both from the aforementioned relinquishment, and from the appointment of Vicars, who are designated by the title of rectors, and from the assignment of tithes and uncertain vestments to these same Vicars. And although the Bishop reserved more for the chapter through these words, "however, the obligations of the burdens of masses, to which the Chapter, the archdeacon, etc., were bound, and the parochial rights which were and are with our chapter, especially concerning private funerals with respect to others, which rights we decree that they shall always remain intact and reserved to them," - reserving, moreover, for the aforementioned Thesaurarius the retention with him of the books of baptisms and confirmations of this city, and the right to receive candles according to custom at funerals, together with the aforementioned chapter... retaining the keys of the holy tabernacle and of the sacramentals through the reverend Thesaurarius, etc." - nevertheless, it does not follow that the care of souls remains with the chapter, on the contrary; for by the enumeration made, it is shown that these rights belong to the chapter by way of exception, and not by themselves. Therefore, from these factual reservations, it is argued that the habitual care remains with the chapter, but not the actual care.

[*Latin ed. p. 30*]

30. Of Saint Agatha of the Goths, and this is confirmed by the following words of the Episcopal Bull: "And having observed that in the future, disputes may arise among the aforementioned parish priests of Saint Angel of Munculani and of the Assumption of the Blessed Virgin, concerning

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the retention of the books of the dead and of marriages, and in order to avoid this inconvenience, we order that these books be kept alternately among the aforementioned parish priests. - Regarding the collation of the aforementioned parishes, in the event of a vacancy, the agreement made between Us and Our Chapter shall be observed, namely that in one instance, the full collation pertains to Us, as it does this time, even with respect to the parish of Saint Angel, should it become vacant; in the other instance, the presentation and nomination shall be with the Chapter itself. Thus, in all future times, the aforementioned alternation shall be observed, as we order it to be observed." Furthermore, vicars and curates of the Cathedral and of Saint Angel are chosen and approved through competition and examination; and they are permanently appointed to the care of souls, as is evident from the bulls relating to the records, and from printed documents, the tenor of which, as I offer one example, is as follows: "Since the care of souls in the same cathedral church, under the patronage of the Virgin Mary, assumed into Heaven, has become vacant through the acquisition of a canonry with a benefice in the aforementioned cathedral church, which has been held for many years by the Reverend Father I. B. Narducci, the last holder of that office, and wishing to provide for the same care with another successor, so that the divine worship may not suffer detriment, and so that it may remain with its widowed pastor, and since this provision, in this instance, pertains to Us with full right, We urge all and sundry who desire to participate to appear within the aforementioned time for the aforementioned competition, and among others, you, Liberate Iamotta, appeared before Us and the pro-synodal examiners.... from whom.... you were found to be capable and suitable for obtaining the aforementioned curacy this time, as stated above, permanently, etc." And in another bull, it is stated: "If the parish church under the patronage of..."

[*Latin ed. p. 31*]

Saint Agatha of the Goths. "By the grace of God, Saint Angel of Munculanis... on the 21st day of the month of January of the current year, and desiring to provide for the spiritual care of the souls of the faithful with another rector and parish priest, so that the divine worship may not suffer detriment, and so that the parish may not remain widowed for a long time, according to the decree of the Most Holy Trident Council, we have promulgated a public edict concerning the assembly of said parish church, etc." Furthermore, these things appear to be intended to demonstrate that vicars appointed to parishes, whether under the name of the cathedral or of Saint Angel, actually exercise the care of the parish, and not at all under the name of the chapter. For a parish can only be considered widowed if it is deprived of its actual rector; not if it lacks a minister who performs the duties superficially and under the name of another. Therefore, since two individuals cannot possess the same benefice, nor can two individuals ac-

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tually exercise the care of the same parish by title and in their own name; it follows that the chapter does not actually bestow the care of souls upon two parish churches. The canons declare that they were, in the past, subjected to a preliminary examination before being instituted to their canonries; but this was before the year 1737. It remains unclear whether this custom still persists. However, since the canons, who are so concerned with defending their rights, remain silent on this matter, it is likely that this custom is no longer observed. Whatever the case may be, this examination, if it is still carried out, cannot today be considered to be directly related to the administration of the parish; especially since, as stated above, the chapter lacks actual care of souls. If, on the other hand, it is intended to authorize the canons to hear confessions, it is not easy to define. Indeed, since the Bishop complains about the conduct of the canons, it seems that the aforementioned examination does not even lead to the proper fulfillment of the sacrament of penance. Therefore, if this examination is still held, it can only be considered a simple test of suitability. Furthermore, the Council of Trent, Session 25, chapter 15, on reform, forbade any priest from hearing sacramental confessions "unless either by a parish benefice, or by the Bishops."

[*Latin ed. p. 32*]

32. Saint Agatha of the Goths, if it seems necessary to them through examination, shall obtain approval; but by the term "parochial benefice" here, we must understand that benefice to which the actual care of souls is attached, and not that benefice to which only a habitual care is attached. Thus teaches De Luca, *De parochis*, discourse 46, number 5: "For other canons of the same church, to whom a habitual care belongs, are not called pastors, nor are their benefices considered as pertaining to the care of souls." Similarly, d'Annibale teaches in *Summa Theologica Moralis*, part III, article 182, note 3, and the Sacred Congregation explicitly defined this in *Cingulana, de cura animarum*, July 19, 1732, and in *Baren, de iuribus parochialium*, April 1, 1876. Therefore, since in the present case, the actual care of souls is not attached to the canons, they can only possess the necessary jurisdiction to validly and lawfully hear confessions through the approval of the Ordinary. Furthermore, canonists teach that even pastors who have been approved and are exercising their ministry in a parish can be subjected to a new examination by the Bishop, even on extrajudicial grounds, if there are new indications of their unsuitability; and if we are speaking of pastors approved by the Bishop himself. But if we are speaking of pastors instituted by the predecessor of the Bishop, they can be subjected to a new examination again, even if the aforementioned indications of their insufficient suitability are absent, and this solely for their own peace of mind. Thus, Ferraris explicitly states in *Verb. Parochus*, article 1, numbers 21-27, citing *Rota recent*, part 19, volume 1, decree 257, Gonzalez, Garcia, Barbosa, De Luca; Pignatelli, volume 1, *Consult.* 133, numbers 7 and following;

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Glossa ad cap. Cum secundum Apostolum 16 de praebend., verb. *liceat*. And so the Sacred Congregation judged in *Pamplona*, apud Pigliateli, loc. cit., number 8. Moreover, if the common law grants the Bishop the faculty of subjecting pastors to a new examination, even after they have already received approval to exercise the care of souls, it seems that the same faculty should be granted to him even more so in the case of canons.

[*Latin ed. p. 33*]

Saint Agatha of the Goths, 33, neither actively exercised the care of souls, nor underwent examination, nor do they appear to have been approved by a Bishop. Regarding the second point, it must be noted that distributions are nothing other than "portions of ecclesiastical revenues customarily distributed daily to those clerics who attend the divine offices at the prescribed hours, distinct from the fruits of prebends," as taught by De Angelis in *Praelectiones Iuris Canonici*, book 3, Decretum, title 4, number 16. From this, it legitimately follows that they must be denied to those who do not attend the choir at the prescribed hours. Furthermore, the Council of Trent expressly states this in chapter 12 of Session 24, where it says: "Those who have been absent at the prescribed hours shall receive the distributions; the others, without any collusion or remission, shall be deprived of them." Therefore, it follows that true physical presence in the choir is required to benefit from the distributions. It cannot be objected that canons who have the care of souls, while exercising this care, are to be considered as present in the choir by the Council of Trent, for the purpose of receiving daily distributions, and therefore should not be subject to penalties. It must be carefully noted that the Council of Trent speaks only of those who hold a dignity to which actual care of souls is attached or is annexed, as clearly taught by Garcia, *De Beneficiis*, part 3, chapter 2, number 337; Fagnanus, book 3, Decretum, *De Praebendis*, numbers 163 and 165; the Sacred Congregation, especially in Monreale, June 8, 1726, and December 6, 1732; in Tortona, September 19, 1643; and also from the Sacred Congregation of Ecclesiastical Affairs and Regular Canons, in Laudun, November 24, 1617. With these points in mind, the following question was posed: I. Can canons of the cathedral church validly and lawfully administer sacramental confessions in this case? Acts, Volume XXII, page 3.

[*Latin ed. p. 34*]

34. Of St. Agatha of the Goths. Whether those who receive sacramental confessions during the hours of divine office are excused from being counted in the choir.

RESOLUTION. The Sacred Congregation, having knowledge of the matter under the date of February 18, 1889, judged it fitting to respond: "Regarding points I and II, maintaining the previous favorable opinion of the Chapter concerning the right to present candidates, the exercise of all

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parochial rights of both parishes should be exclusively and independently granted to the respective rectors, to be chosen by mutual agreement and furthermore."

FROM WHICH THE FOLLOWING ARE GATHERED:

I. From the Council of Trent, a parish priest who has actual care of souls is excused from being counted in the choir, and is considered present whenever, during the canonical hours, he administers the sacraments or other sacred things to the Christian faithful entrusted to him; however, canons are not excused, to whom only habitual care pertains.

II. Actual care in the parish is exercised by perpetual vicars by their own name, and not by the name of the Chapter; because they are appointed perpetually to the care of souls through mutual agreement and examination.

III. No one can be excused from hearing sacramental confessions, unless by a parochial benefice or by an approval obtained from the Bishops, after a prior examination, if it seems necessary to them.

IV. Bishops can, as they see fit, subject even approved parish priests, who are already exercising their ministry in the parish church, to a new examination, if indications of their incompetence should arise.

V. Canons in the parish, if they are still undergoing examination, do so to prove their suitability for that office concerning the hearing of confessions, and not in order to direct the administration of the parish; since the exercise of actual care pertains only to perpetual vicars.

[*Latin ed. p. 35*]

35. From the *Institutiones Panormitanae* of February 16, 1889. Session 22, chapter 11; Session 24, chapter 18. Concerning reforms. In the cathedral church of Palermo, there are 24 canons, most of whom are canons, while some hold titles of dignity. The first dignity and the head of the chapter is the Cantoratus, commonly called the "Cantor"; next to it is the dignity of the archdeacon, followed by the deanship, and other offices. According to the law in force in that chapter, the canons can advance from lower canons up to the archdeaconate, but not beyond; for the Cantoratus is not acquired by option. The Cantoratus, as well as the archdeaconate and other benefices, are subject to the patronage of the King. However, in modern times, the status of the Panormitan Chapter has undergone a change through the actions of the civil government. Twelve benefices have been suppressed, and the assets of the others have been converted into public revenue. Among those preserved was the Cantoratus, to which an annual revenue of 12,000 livres was assigned. However, by Apostolic Letters of Pope Pius IX, dated February 19, 1872, it was permitted that ecclesiastical provision be made even for those whose civil titles had been suppressed, and that those elected be publicly honored with honorary positions. In-

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deed, in those same letters, it was stipulated and declared that the King's patronage should not be recognized in the remaining benefices by the Holy See, nor could it be. Consequently, a conflict immediately arose between ecclesiastical and civil authority, with the former claiming to have the right to nominate, while the latter rejected the actual appointments. Finally, the Archbishop of Le Conquet, in matters concerning the cult, received this response from the Minister of State on November 6, 1883: the canons *honorarii* could not be recognized by the government, having been instituted by ecclesiastical authority.

[*Latin ed. p. 36*]

36. In the ecclesiastical district of Panormitana, the number of benefices is greater than that decreed by civil law; and therefore, these [benefices] are excluded from consideration, and no limit can be imposed on the free choice to which the royal patron has a right. And therefore, the Minister proposed that, in order to reconcile the provision of benefices of this chapter and to eliminate all difficulty in the matter at hand, the Most Reverend [Ordinary] could present three candidates in each vacancy, including a cleric who lacks the qualification of canon without honor. In considering these requests, the Most Reverend [Ordinary] would render the greatest service; but in doing so, this deference to the judgment of ecclesiastical authority should not be considered as an exercise of legal right, which it is not. This proposal was communicated to the Minister for ecclesiastical affairs by the Most Reverend [Ordinary] in writing. This agreement was communicated to the chapter, which accepted it; and accordingly, benefices were provided to its titulars, and all was peaceful until the year 1887. At that time, in the month of January, upon the death of the priest Polito, the cantorate became vacant. The Most Reverend [Ordinary] then presented three priests to the government, namely James Daddi, Auxiliary Bishop and canon; Peter Boccone and Ignatius Zuccaro, both canons. However, the government did not appoint any of these, but Ignatius Pasqualino, archdeacon of the same cathedral, who, without consulting the Ordinary, immediately went to Rome, and, through prayers and recommendations, not always equitable, finally obtained, on June 16 of the same year, the appointment he had sought. However, the Ordinary refused to institute him; therefore, he appealed to the Sacred Congregation of Rites. In the meantime, however, he again undertook the journey to Rome, in order to more easily obtain the grant of institution from the Sacred Congregation of Rites, and at the same time to resolve another dispute concerning precedence, which he claimed in the choir over the Auxiliary Bishop. But he obtained neither; he did, however, obtain that a pension of 3,700 livres be paid to him from the revenue of the vacant cantorate by the government. Subsequently, Pasqualino returned to Panormum, after having been heard by the Sacred

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Congregation of Rites.

[*Latin ed. p. 37*]

PALERMO, on the 37th day, resolved the aforementioned matter, and the Sacred Congregation of Rites informed the canon Pasqualino that the cause for his institution should be examined in a plenary session of the Most Reverend Fathers.

A SYNOPTIC SUMMARY OF ARGUMENTS FAVORABLE TO CANON PASQUALINO.

Furthermore, the advocate, whom Canon Pasqualino had chosen, having previously stated that, according to unwavering legal judgment and the common opinion of all Reverend Fathers, as stated in *Devoti Inst.*, canon law, book 1, title 5, section 4, page 47, the institution cannot be denied to one who is presented by a legitimate patron, and who is suitable and worthy of the institution, argued that two points must be proven: 1. that the government possesses the right of patronage in this matter, and 2. that Pasqualino is suitable and worthy to be instituted as a cantor.

Regarding the first point, he recalled from the history of Rocchi Pirri, page 264, that King Philip II, in the year 1571, granted the royal benefice of Saint Nicholas of Mazaria to the Cathedral of Palermo, which yielded an annual sum of 24,000 livres. From this, it follows that the government, through this significant increase in endowment, acquired the right of patronage in the dignity of cantor. Indeed, according to the advocate, since this patronage is real, it must necessarily be transferred to any successor who possesses the kingdom; *Devotio*, chapter 1, page 55. It is irrelevant that the Holy See has ordered that royal patronage in this matter should not be recognized; for this decree was neither published nor observed in practice, but remained hidden. Indeed, it is known that, in recent years, the Ordinaries have three times instituted those presented by the government, and this occurred in the years 1848, 1866, and finally in 1880, by the Most Reverend Prelate himself who now governs the Cathedral of Palermo, while the Archbishop was present.

Furthermore, it is a well-established principle in matters of patronage that, with regard to the provision of benefices, the ultimate situation must be considered. The Sacred Rota, as can be seen in the parochial case of Santiago de Compostela, of January 11, 1751, *De Vais*.

[*Latin ed. p. 38*]

38. In PANORMITANA, furthermore, according to the patron, a certain agreement was established between the governing body and the Archpriest, by which it was stipulated that the king should not choose anyone he pleased, but rather one of the three candidates proposed by the

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Ordinary, who would subsequently be faithfully appointed. The patron affirms that this agreement does not affect the Cantorate, but only other lower benefices. Indeed, he adds that this agreement constituted a favor rather than a right; it is said that it does not imply the exercise of a right. Having thus established this point, namely that the governing body has the right to nominate, the advocate proceeds to add another argument, or to demonstrate the suitability of the nominated individual. And here, the advocate recounts several titles held by Pasqualini, among which the most prominent is that he is a canon and holds the first position after the Cantor. Therefore, it follows that nothing can prevent him from ascending to the highest *gradum*. Moreover, it is stated that seven years ago, due to a fortuitous circumstance, he actually exercised the Cantor's office, which is the head of the chapter.

WHAT IS OPPOSED TO CANON PASQUALINI. Conversely, it was noted in the case that the governing body did not have the right *antiquum*; but rather, it was disputed whether that right still existed. The advocate believes that this right has not been abolished, because the apostolic *litterae* of Pope Pius IX have not been published, nor has it been accepted in practice. However, the *Tridentinum*, which in chapter 11 of session 22 on Reform, states: "If any cleric, or layperson, whatever his dignity, even imperial or royal, has been so overcome by the root of all evils, namely, greed, that he has converted to his own use, by himself or through others, by force or by intimidation... the jurisdictions, goods, revenues, and even feudal and emphyteutical rights, fruits, emoluments, or any other gains, which ought to be converted for the necessity of ministers and the poor... then he shall be subject to an anathema, as long as he does not fully restore the jurisdictions, things, etc." And if he...

[*Latin ed. p. 39*]

"PANORMITANA 39: The patron of the church, even by the right of patronage, shall, in addition to the aforementioned penalties, be considered, by that very fact, deprived [of his rights]. However, the government has despoiled the church of Panormitana of more than half of its assets. Therefore, it unjustly claims the rights of patronage over it and its benefits. Indeed, for the government, after such an act, to presume to grant favors and privileges that are given to benefactors out of gratitude, by force and as if by right, is shameful and insulting, and seems to add injury to the damage already done, and to mock it. Furthermore, assuming that patronage in no way pertains to the government, the presentation [of a candidate] and the Pasqualinian right have already collapsed. For, from the very confession of the opposing party, the right of presentation is correlative to the power of the one presenting. However, having conceded only a little, the government has not lost the right of patronage through the spoliation of the church: since, indeed, the King's minister, in a public document intended

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to end certain disputes, proposed a particular method for providing for the benefits of the church of Panormitana, and the Archbishop, with prior approval of the Holy See, accepted this method; it follows that this new method of election is to be considered a law, by which former rights, if any existed, have been abrogated or changed. However, the canonical presentation to Pasqualino is entirely contrary to the tenor of the agreement. Therefore, it is null. For, "it is decreed by imperial constitution that those things which are done contrary to the laws are not only useless, but are to be considered as if they had never been done." Canon 13, causes 25, question 2. Moreover, it is certainly to be declared null, if we also consider that the entire right of the government proceeds from the indulgence of the agreement. It is not beneficial that this has been sanctioned; first, because it would give a bad example, providing ambitious clerics and magistrates with an opportunity to do worse, as Emus Praesul notes; and second, because it would be a scandal to the faithful and would give a reward to the undeserving. More things militate against Pasqualino, which the Ordinary separately recounts, some of which we will examine below;

[*Latin ed. p. 40*]

40. In Panormitana, among other things, it must be particularly noted that this very individual was the sole cause of the present discord; for he traveled to Rome without recommendations, without permission, and contrary to the will of his Ordinary and the established convention, he besieged the civil magistrates with prayers and entreaties, so that he might finally obtain what he desired, namely, that the proposals of the Ordinary be rejected and that he himself be appointed. These actions, which are inherently improper and most reprehensible, whether they also bear the stain of simony, and whether they have rendered this ambitious canon incapable of holding a benefice, are matters for the Most Reverend Fathers to judge. Certainly, at least in Aretina, on the day of September 18, 1888, the Sacred Congregation rejected two clerics who, in defiance of the Church's prohibition, had sought appointment from the government (1). One might perhaps speak of the pension that Pasqualinius obtained from the government for the vacant income of the Cantoratus, after repeated journeys to Rome, and with the title of a civil appointment enhanced; this request for and attainment of the pension might perhaps be considered as an intrusion, or as a violent encroachment upon a benefice, by which he is deprived of any right he might have had, according to chapter 5 of the De electione, "On Avarice," and chapter 6, "On Him Who Offers," in the sixth book: "Moreover, those who, with violence, or rather with audacity, seize dignities, offices, or any ecclesiastical benefices, are restrained, if not by the love of virtue, at least by the fear of punishment, from the audacity of their presumption; and they thereby forfeit any right that they might have had in those dignities, offices, or benefices." And so, Pasqualinius,

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meanwhile, lives quietly with the Most Reverend Ordinary, without considering his own conscience, and enjoys a considerable portion of the vacant praebendae, to which he has no right, and to which he is obligated to restore. Regarding Pasqualinius' merits, the Most Reverend Prelate noted some things, saying: Pasqualinius presumes that the decree of Riez, by which he was appointed cantor, was an act of justice, by which he was legitimately (1) Recolé Vol. XIX, 543.

[*Latin ed. p. 41*]

In PANORMITANA, the royal patron held authority over the Archdeacon; who, when the singer was infirm, also performed his duties in the office. It is to be known that Pasqualinus, after the Archdeacon, reached the Archdeaconate, not through his own merits, but by the right of option and longevity of life. In this chapter, all are chosen for the benefice, except for the singer's position. However, I believe that none of my predecessors would ever have chosen Pasqualinus for the dignity of the Archdeaconate, if he were to be chosen according to merit. Regarding the duties of the singer which he performed, the Archdeacon said that it was a burdensome task; but he performed this duty poorly, and because he was absent from the choir for six months each year, alleging various reasons. Pasqualinus asserted that he was unaware of the discord between the government and the Archbishop, and therefore he was unaware of the reason why his requested institution was being delayed. This assertion, said the Prelate, is too simple to be admitted. For who was unaware of the conflict between the Prelate of Panormitana and the Government, which lasted for ten years regarding the provision of canonries! Nor could the last Chapter Sacristan remain ignorant. It is truly noteworthy that Pasqualinus, in his defense, claimed to be unaware and to wish to be unaware of the cause of the aforementioned discord, and he observed that the royal patronage had not been exercised for three centuries, but had been observed by the secular succession of Prelates, and that this was the first act contrary to that. With this observation, it is certain that Pasqualinus is contending against the decrees of the Holy See regarding the pretension of illegitimate governments over the right of patronage. I do not believe that it can be attributed to chance that Pasqualinus possesses knowledge of the sacred canons, by virtue of which the institution cannot be denied. And now, the honors which were presented by the canon Pasqualinus, for the requested institution, should be considered of little importance, since they are common to all canons. However, it must be noted that the title with which Pasqualinus boasts was, on May 29, 1868, conferred by a royal decree, namely, the title of ecclesiastical judge of second instance at tribu+.

[*Latin ed. p. 42*]

42. PANORMITANA. Concerning the Royal Tribunal, or Prefecture, in

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Sicily. But it is known that this kind of tribunal, which was the cause of many evils, was suppressed by Pope Pius IX through Apostolic Letters dated October 27, 1867, after having been published in the year 1864. Afterwards, Cirinus Rinaldi was specifically excommunicated (1). Therefore, it is not to be considered honorable that he was elected as a judge of the tribunal after its suppression. Indeed, it is clear that he was misled and acted irregularly, since he remained in the exercise of his office even after the suppression, and he participated in a criminal act with Cirinus Rinaldi, who was specifically excommunicated. It should also be noted that, after much reluctance and great effort, he was induced to petition for absolution from the Holy Penitentiary, which he obtained on March 20, 1872, with my assistance and urging, as the Archbishop stated. After these considerations, the purpose was to resolve the doubt as to whether there is a place for an institution in this case.

RESOLUTION. The Sacred Congregation of Councils, after discussing the matter on February 18, 1889, decided to respond: Negatively.

FROM WHICH THE FOLLOWING IS GATHERED:

I. Any cleric or layperson, even one shining with imperial dignity, is subject to an anathema to the extent that he has dared to usurp the goods of any church; and, beyond excommunication, he shall be deprived of the right of patronage if he is the patron of that church.

II. Having lost the right of patronage due to punishment, it is futile to presume to make nominations for vacant benefices; since only benefactors, by pontifical grace, can enjoy this privilege.

III. The government in every matter is stripped of all privileges of the right of patronage, due to the act of seizing the goods of the Church, over which it claims patronage; and, moreover, it has lost the right to presentation, even if it had it, after a convention began with the Archbishop regarding the manner of providing for...

(1) Details are found in Vol. III, 177, and Vol. IV, 118.

[*Latin ed. p. 43*]

PALERMO: 43 vacant benefices; therefore, he did nothing wrong in nominating Pasqualinus for the vacant position of Cantor. IV. The Bishop ought to grant the institution to the candidate presented by the legitimate patron, whenever nothing in the presentation obstructs, for which reason he should be repelled from the benefice as unworthy. V. Those who read the presentation in the chapter of Palermo will see the honor and merits that lead to obtaining the first dignity, richly endowed. BARCELONA. CONCERNING THE COMMUTATION OF VOWS. January 19, 1889. By summary prayers. A SUMMARY OF THE FACTS. The parish priest of Saint Peter in the town commonly called Rindevitllez, of the Diocese of Barcelona,

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states: "That in the same parish, in the year 1833, Joseph Goma and Suriol died, who in his valid testament arranged that after his death, Masses and anniversaries should be celebrated from all his goods, designating his testamentary executor, the parish priest of the same place. From the death of the testator until the year 1856, countless Masses and anniversaries were celebrated for his soul, and subsequently, the will of the testator has been so fulfilled that from the year 1858 until the present day, almost a thousand anniversaries and two thousand Masses have been celebrated. The goods of the aforementioned testator were sold, due to circumstances of time, with the prior permission of the Apostolic Nuncio of this Kingdom, and their price was deposited in the diocesan treasury, so that the income from them has increased to such an extent that it yields a sum more than double that of the aforementioned revenues." "Now, since a large debt has arisen in the aforementioned parish due to the construction of the chapel of the Most Holy Eucharist, and the alms of the faithful are not sufficient to cover it, nor is there a means of paying the workers, the speaker humbly requests Your Holiness to grant the faculty of spending..."

[*Latin ed. p. 44*]

44. BARCELONA. The testator, praised for his good works, bequeaths the entire value, or at least the largest portion, of his property, in such a manner as to extinguish, or at least significantly reduce, the debt to which the parish church of Saint Peter of Rindevitllêz is subject. The Ordinary of Barcelona commends these requests to the benevolence of the Holy See, "all the more so because the revenues from the endowment, which previously amounted to 225 *libellae*, commonly known as *pesetas*, each year, are now, due to the improvement of the capital, 450 *libellae* annually." The following principle, accepted in Nov. 22, is held: "Let each one dispose of his own as it seems right to him, and let his will be his law." However, in both laws, it is stipulated that the last will of the deceased must be observed in every way. Canon Ultimus, vol. 1, question 2; Lex. I Cod. de SS. Eccl. Although the Apostolic See possesses the power to alter the wills of the deceased, it "should not, nor does it usually do so, without a just and necessary cause," as Fargna De iur. patron, part. V, canon 11, section 4, number 2, states. Hence, the Council of Trent, Session XXII, chapter 6, De Ref., states that alterations to last wills should not be made unless there is a just and necessary cause. Furthermore, the reason alleged in the matter is, indeed, of the greatest importance. It is absolutely necessary that the chapel in which the Most Holy Sacrament is reserved be fitting, indeed, if possible, and that it shine with splendor. When, however, neither the alms of the faithful nor other means are sufficient to construct or repair buildings necessary for divine worship, it is not unusual that, in such cases, the Sacred Congregation [of Rites] exercises leniency in the alteration of last wills; indeed, it is known to have been done frequently, as evidenced by the

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document of January 31, 1852. In addition to the foregoing, the following is presented as a reason for exercising such leniency in the present case: that already, countless sacrifices have been offered for the repose of the soul of the testator, and that, through the diligence of the administrators, the revenues have been greatly increased.

[*Latin ed. p. 45*]

BARCELONA. 45 Having considered these matters, the question was raised as to how prayers should be offered. RESOLUTION: The Holy Congregation, on March 2nd, 1889, after deliberation, decided to respond: "As requested, it does not seem expedient; and for the granting of the reduction of masses to one-third of the revenues, for the purpose of providing for the aforementioned cause for a period of ten years, an agreement has been reached with the Most Holy Congregation of Sacred Rites regarding the beatification and canonization of the venerable Servant of God, John Juvenal Ancina, a disciple of Saint Philip Neri, and later Bishop of Saluzzo. CONCERNING THE DOUBT: Regarding the miracles, and concerning which miracles are relevant to the case, and to the effect that is being pursued? Truly, with divine providence, God, who is truly powerful, has, over a period of time, provided his Church with opportune aids, and has raised up many holy men in that century, from the very stones, a century in which the Lutheran heresy was spreading unchecked throughout Germany and other regions, and in which worldly pleasures were enticing men, making the path of virtue seem more difficult. In that same age, the venerable John Juvenal Ancina, counted among the first disciples of Saint Philip Neri, and later a good pastor and prelate of the Church of Saluzzo, was born on the 14th of November, in the year 1545, in Fossano, in the Subalpine region, to pious parents. He was educated in good arts in France, at Montpesulane, where he was sent as a young man; shortly thereafter, he was recalled home, lest he be exposed to the heretical contagion that was spreading there. And in the Academy of Montreale, he diligently applied himself to the study of philosophy and medicine, so that he soon taught those disciplines with great skill. Meanwhile, meditating on the law of God day and night, especially fearing the terror of the final judgment, despising the world and its temptations, he hastened to embrace the path of perfection.

[*Latin ed. p. 46*]

46. Guided by the highest authority, the decree proceeded to Rome: where he found Saint Philip Neri, first as a spiritual guide, and then as a most beloved father, and, called by God, he joined the Congregation of the Oratory; in which, having advanced in the priesthood, he worked diligently for the salvation of souls in this, the principal city of the Catholic world, and also in Naples. Endowed with the splendor of all virtues, as well as with clarity of knowledge and learning, he strove with fervent zeal

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to draw those near who were on the path of error and vice, and to attract them to the love of God: therefore, he was deemed worthy to be adorned with the sacred mitre, and was appointed Bishop of Saluzzo. In this office, he clearly demonstrated that he had received the Spirit, which is from God, and that he lived and walked in it; and it is scarcely believable how, with labor and industry, he attracted the faithful, as the best helper of God, to the pastures of life, with the salt of wisdom, and with the sweetness of morals, and especially with the charity that he poured out upon all, until the day of his death: which, prepared for him in accordance with justice, he bravely embraced on the eve of the Kalends of September in the year 1604. So great was the fame of his virtues, even while he was alive, that the eminent and holy Doctor Francis de Sales (with whom he was united in holy friendship) deserved a noble eulogy from him, and indeed, he was called "Salt and Light of the Church." This fame, moreover, grew ever wider after his death, so that processes were instituted first in Saluzzo and elsewhere, and then with Apostolic authority; which, although with a long interval of time, were thoroughly examined and approved by the Sacred Congregation of Rites. Although this cause had various stages, finally, the heroic virtues of the venerable John Juvenal were recognized, and Pope Pius IX, of blessed memory, after legitimate meetings held by the Sacred Congregation of Rites, solemnly decreed it on the 29th of January, 1870. Then, it was begun to investigate two miracles, by which the holiness of the venerable John Juvenal was said to have been confirmed by God after his death: and from the records of the legal proceedings, a judgment was reached through a threefold discussion before the Sacred Congregation of Rites, namely, in the preparatory meeting before the Most Reverend Cardinal Aloysius Billio, Prefect of the same Sacred Congregation, on the eve of the Nones of September in the year 1877; then in the preparatory meeting in the Vatican Palace on the Ides of April in the year 1886; and finally, in the general meetings before the Most Holy Pope Leo XIII, in the same Apostolic Palace in the Vatican, on the Ides of March in the year 1889. In these, the Cardinal of Rome, Luke...

[*Latin ed. p. 47*]

47. DECREE: While Mary Barocchi was being examined, and Cardinal Bili having passed away while the cause was pending, she was appointed Relator in the Cause. The proposed question was: "Concerning what miracles does it consist in this case, and to what effect do they pertain?" The Most Blessed Father, after carefully considering the votes of the Reverend Cardinals and the Consultors, and before exercising his supreme authority to make any decision, admonished those present to earnestly implore God, so that the Holy Spirit might deign to grant illumination in this matter of such great importance. On this solemn day, when our Redeemer ascending on high led captivity captive, and gave gifts to men, after offering the

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Eucharistic Sacrifice, sitting on the pontifical throne in the Basilica of the Vatican, he summoned the Most Reverend Cardinals Charles Laurenzi, Prefect of the Congregation of Sacred Rites, and Lucida Mariam Parocchi, Relator of the Cause, together with the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary, and in their presence, he pronounced: "It is established that there are two miracles, brought about by God through the intercession of the Venerable John Juvenal Ancina; namely, the first: the instantaneous and perfect healing of the Lady Catherine Centenari, who was suffering from a long-standing and very severe pleurisy, afflicted with the most grievous symptoms; and the second: the instantaneous and perfect healing of Alexander Vacca, who was suffering from a long-standing and very severe fistula between the sixth and seventh ribs on the left side. He ordered that this decree be promulgated and recorded in the acts of the Congregation of Sacred Rites on the 3rd of June, in the year 1889.

CHARLES CARD. LAURENZI, Prefect of the Sacred Rites, S. R. C.

L. © S. VINCENTIUS NUSSI, Secretary, S. R. C.

[*Latin ed. p. 48*]

48 DECREE concerning the beatification, or declaration of martyrdom, of the Venerable Servant of God, John Gabriel Perboyre, priest, of the Congregation of the Missions of Saint Vincent de Paul. CONCERNING THE DOUBT: Whether, with the approval of the martyrdom and the cause of martyrdom, and with it being illuminated and confirmed by numerous signs and miracles from God, it is possible to proceed safely to the solemn beatification of the Venerable Servant of God. The singular strength of spirit and constancy, arising from charity and taking its form from Christ who suffered for us, having taken Him as an example, and which is the most outstanding characteristic of Christian martyrdom, which was evident in many other Christian heroes, was particularly remarkable in this century in the variety and duration of the torments endured by the Venerable Servant of God, John Gabriel Perboyre, by which the noble people of France justly boast. An undefeated athlete of Christ, a priest of the Congregation of the Missions of Saint Vincent de Paul, fully imbued with the spirit of Saint Vincent, inflamed with zeal for the persecution of Christians, he arrived in China on the 24th of June, 1835, and, spurred on by the zeal for the salvation of souls, and despising the dangers and the threat of death, he accumulated the labors of the evangelical ministry, and all the virtues worthy of an Apostle, finally culminating in a glorious and prolonged struggle for Christ; after enduring the most severe torments with fortitude and great spirit, he merited to testify his faith with his blood. This was his path to glory, as the golden words of Augustine state: "The victory of truth is charity." Indeed, the fame of this martyrdom, having spread far and wide from Asia to the regions of Europe, and having reached the Apostolic See,

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after legal investigations were carried out concerning the martyrdom of the Servant of God, the cause of his martyrdom, and concerning the signs or miracles, a most rigorous examination was instituted in three discussions by the Congregation of Sacred Rites; and finally, by a decree issued on the 28th of November of the preceding year, the Most Holy Pope Leo XIII rightly declared that the martyrdom of the Venerable Servant of God, John Gabriel Perboyre, the cause of his martyrdom, and the numerous signs and miracles, were illuminated and confirmed by God. Therefore, in order that the wishes of Catholic France, and especially of the members of the Vincentian Congregation, may be fulfilled, in order to proceed lawfully to such a matter...

[*Latin ed. p. 49*]

DECREE 49. The cause was to be completed, and it was necessary to determine the solemn honors to be rendered to the blessed deceased, concerning the venerable John Gabriel, within the Church. Therefore, in the general assemblies of the Sacred Congregation of Rites, before the Most Holy Pope Leo XIII in the Vatican buildings on the fourth of the Ides of March, of the year 1889, the Most Reverend Cardinal Charles Laurenzi, promoter of the cause, proposed the following question: Whether, with the approval of the martyrdom and the cause of martyrdom, and with the cause illuminated and confirmed by numerous signs and miracles from God, it is permissible to proceed safely to the beatification of the Venerable Servant of God, John Gabriel Perboyre? The Most Blessed Father, having received the unanimous affirmative vote of the Most Reverend Cardinals and Consultors, pronounced his supreme judgment, declaring that it is permissible, and admonishing those present to implore a special light from God for this purpose. On this solemnity of the Ascension of our Redeemer, the Holy Father, having first celebrated the Sacred Mysteries in his private chapel, then, seated on the noble throne in the more splendid hall of the Vatican Palace, in the presence of the Most Reverend Cardinal Charles Laurenzi, Prefect of the Sacred Congregation of Rites and promoter of the cause, together with the Reverend Father Augustine Caprara, Promoter of the Holy Faith, and myself, the undersigned Secretary, decreed: That it is permissible to proceed to the solemn beatification of the Venerable John Gabriel Perboyre. This decree was to be promulgated, and recorded in the acts of the Sacred Congregation of Rites, and Apostolic Letters, in the form of a Brief, for the beatification to be celebrated whenever desired, were ordered to be issued on the third day before the Kalends of June, in the year 1889.

CHARLES, Cardinal LAURENZI, Prefect of the Sacred Congregation of Rites.

L. jjl S. VINCENT NUSSI, Secretary.

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S. Acta, Vol. XXII. fase. COLUI. R. C.

[*Latin ed. p. 50*]

APPENDIX L. In which are recounted several Decrees of the Holy Congregation of Rites.

PISANA. When the Most Reverend Lord Ferdinand Capponi, Archbishop of Thessalonica, Coadjutor with right of succession to the Most Reverend Lord Paul Michael, Archbishop of Pisa, inquired of the Holy Congregation of Rites: Whether, considering the special Bull of his election, his name should be mentioned in the Mass, or that of the Most Reverend Titular Archbishop? The same Holy Congregation, after hearing the report of the undersigned Secretary, and the opinion of another of the Masters of the Sacred Ceremonies, responded: Negatively to the first part, affirmatively to the second. And thus it responded, and wrote. March 11, 1882.

MONTEYEREN and ANGELORUM. The Most Reverend Lord Francis Mora, Bishop of Monteyeren and Angelorum in California, humbly requested a resolution from the Holy Congregation of Rites regarding the following doubts:

Doubt I. On the Feast of Saint Bibiana, Virgin and Martyr, Patroness of the Diocese and Titular of the Cathedral Church, in the Office and Mass, the "Deus qui inter cetera potentiae tuae miracula" prayer is said. Is this same prayer to be said for common commemorations in a votive Mass, and when is it to be added for the third prayer at the option of the priest? Also, a similar question is asked regarding the commemorations of the Exaltation of the Holy Cross, Saint Gabriel the Archangel, the Nativity of Saint John the Baptist, and Saint Agnes, Virgin and Martyr? The reason for the doubt is that the prayers assigned to the aforementioned feasts seem to be suitable only for the day of the feast, or the Nativity.

Doubt II. Since the rochet and mozzetta are the ordinary vestments of Bishops, which they may use at home and abroad, is it permissible for Bishops to attend mixed marriages wearing these vestments? The reason for the doubt is: because Bishops in this region use these vestments in churches, but very rarely at home and abroad. If a Bishop were to attend such a marriage wearing these vestments, might there be an opportunity for the laity to believe that the sacred rite is being performed by a Bishop, which they know is not done by a simple priest?

Doubt III. Can the custom of having the people incensed, which is done from the sanctuary by a lay thurifer, be continued?

[*Latin ed. p. 51*]

"IX. i. The Offertory in a Solemn Mass, and in Vespers at the Magnificat. Question IV. Can the practice be tolerated which has prevailed in some Churches, namely, that in Vespers, certain verses from all, or some, of

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the Vespers Psalms are sung, while the others are omitted? The Sacred Congregation, after hearing the opinion of another of the Masters of the Sacred Ceremonies, and after carefully considering the questions proposed, has decided as follows: Regarding the Prayer for the Nativity of St. John the Baptist, affirmative; regarding the Exaltation of the Holy Cross, the prayer should be taken from the votive Mass for the Cross at the end of the Missal, except for the intercessions, for which the prayer indicated there should be said; regarding the prayers of St. Bibiana, St. Agnes, and the Archangel St. Gabriel, affirmative, with the respective words changed to "nativity," "solemnity," "feast" to "commemoration," "memory." Regarding the Supreme Universal Inquisition. Regarding III. Affirmative, provided that the layperson, like a cleric, is wearing the cassock, and is not different from one who has received the tonsure. Regarding IV. Negative, and this practice should be completely eliminated. And thus it was decided, and it was ordered to be observed. March 11, 1882. 51 MONTEYEREN. AND ANGELORUM. To the Most Reverend Brother. Among the questions proposed by Your Eminence to the Sacred Congregation of Rites for appropriate resolution, to which a response has been given this very day, was the question of whether, given the circumstances of the place, it would be permissible for Your Eminence to attend a sung Solemn Mass and Vespers wearing a Rochetto and Mozzetta, or adorned with a Pluvial or Cappa, with boys wearing cassocks serving as substitutes for the sacred ministers assisting the Bishop. The same Sacred Congregation, with the reference of the undersigned Secretary, adhering to the prescriptions of the Ceremonial of Bishops, and of several Decrees, declares that it is in no way permissible for a Bishop to sit on the throne wearing a Rocchetto and Mozzetta, or wearing a Pluvial and Cappa, using simple clerics wearing cassocks in place of the sacred ministers assisting. However, the same Sacred Congregation, considering the circumstances presented, has decided to grant an indulgence so that Your Eminence may attend these sacred functions in the first stall in the choir, above all others, in accordance with the Decree of July 24, 1638. (1) Rome, March 11, 1882. To the Most Reverend Brother Bishop of Monteyeren and Angelorum. (1) OXOMEN. The Bishop of Oxomen, desiring to attend the Divine Services even on weekdays because of his particular devotion, requested permission to attend wearing a Rocchetto and Mozzetta. And the Sacred Congregation granted this, "provided that it is not in the ordinary seat, but in the first stall."

[*Latin ed. p. 52*]

52 APPENDIX I. DECREE GENERAL. From a less correct interpretation of the Decree of the Holy Congregation of Rites, issued in Santiago de Compostela on April 8, 1808, in which it was declared that the Mass for the Dead could be said in the presence of a corpse on days of the double

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first class, even if not obligatory feasts, except for the titular feast; it came to pass that in some churches the practice prevailed of singing such Masses on the solemnity of the anniversary of the church's dedication, which, as a feast of the Lord and of greater dignity than the titular feast, must never, according to the decrees, be postponed. Therefore, in order to remove all ambiguity, the same Holy Congregation of Rites deemed it opportune to declare, as it declares and prescribes in the present Decree, that nowhere is it permitted to sing the Mass for the Dead, even in the presence of a corpse, on the anniversary of the dedication of the church, as has always been observed in the Patriarchal Basilica of the Lateran and in other more important churches of the city. Notwithstanding the Decree of April 16, 1853, issued to the Order of the Friars Minor of the Observance concerning Question XX; in which such a Mass was permitted. And so it was declared, and it was commanded to be observed. February 27, 1882. Having been reported by the undersigned Secretary to His Most Holy Lord Leo XIII, His Holiness approved and confirmed the Decree of the Sacred Congregation on March 16 of the same year. AJACCIO. The current Archbishop of Ajaccio humbly requested the Holy Congregation of Rites to declare on the following matters: I. For a long time, the parish priests and rectors of churches in the Diocese of Ajaccio have used the rochet when administering the Sacraments, although the Holy Congregation of Rites expressly declared on January 10, 1852, and in other instances, that "the rochet is not a sacred vestment to be used in the administration of the Sacraments, and therefore, a surplice must necessarily be used for administering them." The question is whether the Archbishop can or should tolerate this old custom, which is indeed more convenient and is universally practiced in the Diocese? II. Since canons, whether titular or honorary, use the plain rochet without any ornamentation in the Cathedral Church, can it be permitted for other canons, parish priests, and other priests in other churches to use the rochet, as they stand in the choir, above all other assistants, and this even in the absence of any assistance from the canons, as mentioned in the book *Caeremoniale Episcoporum*, book 1, chapter 8? July 24, 1638.

[*Latin ed. p. 53*]

)ix i. throughout, are they usually adorned with embroidery or texts with serrated edges, concerning which the Chapter of the Cathedral Church has been consulted? III. Can Confessors, frequently administering the Sacrament of Penance in the church or in the confessional, wear a stole without a cope, or vice versa? Furthermore, the Sacred Congregation of Rites, in response to the request of the undersigned Secretary, and after careful consideration of the opinion of another of the Masters of the Sacred Ceremonies, declared as follows: To I. Negative. To II. Negative in all cases. To III. The Roman Ritual must be observed. And so it declared, and wrote. On March 23, 1882. GNESNEN. AND POSNANIEN. By various decrees of

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the Sacred Congregation of Rites, it is forbidden to use sacred vestments made of cotton or wool, and it is prescribed that they be made only of silk. However, since not all churches can afford to purchase such silk vestments due to a lack of funds, the aforementioned Sacred Congregation of Rites was petitioned by His Eminence and Most Reverend Cardinal Miecislaus Ledochowski, Archbishop of Gnesen and Posen, to determine whether, considering the poverty of the churches, it is permissible to use a type of fabric for preparing sacred vestments that, while appearing to be entirely made of silk on the outside to the eye of the beholder, has its textile structure supported by cotton, wool, or linen? And the same Sacred Congregation, after considering the opinion of another of the Masters of the Sacred Ceremonies, as reported by the undersigned Secretary, declared as follows: Considering the poverty of the churches, the type of fabric mentioned may be tolerated for sacred vestments in this case. And so it declared, and wrote. On March 23, 1882. PLACENTIA. The Most Reverend Father Francis Tammi, the current Prefect and highest dignity of the Cathedral Church of Placentia, states: 1. that he has an assistant to his dignity; 2. that in the Piacentine Cathedral, the dignities are divided into priestly and diaconal; and that some are priestly, some are diaconal, and others are of the subdiaconal order; and 3. that to increase the small number of priests, especially on days when the Bishop celebrates or is present, the assistant and coadjutor participate together in the choir; and he humbly requested a solution to the following doubts from the Sacred Congregation of Rites: I. When the Orator and the assistant are present in the choir at the same time, which of them should serve at the altar?

[*Latin ed. p. 54*]

54 APPENDIX I. It is asked whether a Coadjutor, considering the resolutions of the Sacred Congregation itself (as in Iesi on April 4, 1705), ought to obtain a stall immediately after other Dignities of the presbyteral order? II. While a Coadjutor is assisting at the altar, should the present Coadjutor refrain from participating in his stall in the choir, and from performing any action, even a secondary one, such as, for example, offering the censer to the Bishop present in his pontifical vestments, giving the kiss of peace, and performing other things prescribed in the *Caeremoniale* (chapter 5, concerning the filling of the places of Canons), leaving these duties to the Dignities of a lower order? Conversely, if a Coadjutor is serving at the altar, can he likewise behave in this manner? And the Sacred Congregation, after considering the report of the undersigned Secretary, and after careful deliberation with another of the Masters of the Apostolic Ceremonies, judged it fitting to declare as follows: To I. Affirmative. To II. Affirmative regarding the first part, Negative regarding the second part. And thus it declared and decreed. April 21, 1882. SENIEN AND MODRÜSSEN. The Most Reverend George Positovic, Bishop of Senien and Modrussen, presented the follow-

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ing to the Sacred Congregation of Rites: In the Church of Saint Vitus in the City of Fluminensis, in the Diocese of Senien and Modrussen, for the purpose of restoration and greater adornment, a new internal inlay made of marble has been installed. And for this purpose, with the permission of the Ordinary, the previous inlay, commonly known as plaster, on which were depicted crosses and signs of consecration, was removed throughout the entire interior of the church, along with the crosses, and indeed this was done simultaneously, not successively, because it was deemed necessary by the craftsmen. In the rest of the church, both inside and outside, nothing has been changed; the main altar and all other consecrated altars remain unharmed. Nor did anything else happen during the restoration that could cause the church to be considered profaned or violated. Hence, the Sacred Congregation itself humbly requests a resolution regarding the following doubt: In the case described above, has the church lost its Consecration, and does it require a new consecration? And the Sacred Congregation, after considering the report of the undersigned Secretary, and after hearing the opinion of another of the Masters of the Apostolic Ceremonies, judged it fitting to declare as follows: Negative regarding the first part; regarding the second, provision is made in the first: and let the crosses be painted or affixed again on the walls as a testimony of the completed consecration. And thus it declared and decreed. May 5, 1882.

[*Latin ed. p. 55*]

To the Most Illustrious and Reverend Lord, as a Brother, the following was explained in a letter dated March 3rd of the current year: A. T. inquired about certain matters concerning subterranean areas of churches, which are to be soon consecrated in this Archdiocese of Turin, where spectacles, in the manner of a theater, are to be held, especially for the edification of the youth. Furthermore, in a letter dated March 31st of the same month and year, the aforementioned A. T. inquired whether a church, belonging to a lay family, can be lawfully consecrated, considering that, according to civil laws, it can be inherited, sold, or converted to profane use. The Sacred Congregation of Rites, after duly considering the report of the undersigned Secretary, decided to respond to Your Eminence as follows:

I. It is not permissible, since the church, along with its subterranean part, is consecrated as one.

II. In the case in question, unless sufficient guarantees are provided, Your Eminence should abstain from the consecration of such a church.

Rome, May 4, 1882.

To the Most Illustrious and Reverend Lord, as a Brother, the Archbishop of Turin.

SANCTORIEN.

The current Master of Ceremonies in the Cathedral Church of Sanctorien,

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humbly requested a resolution of the following doubts from the Sacred Congregation of Rites:

I. If, on the occasion of the feast of a saint, both the secular clergy and the diocesan clergy commemorate it with an Office and Mass, celebrating separately, is it permissible for a secular priest, or even the Bishop, celebrating Mass in a regular church, where that feast is observed with its proper Office and Mass, and with a higher rite, to read or sing the Mass proper to the Regulars, or should he use another Mass that corresponds to the Office of the secular clergy, when the color of the vestments is the same for both clergy?

II. When the Most Holy Sacrament is publicly exposed during Mass, or during Vespers, or is covered, according to the ancient custom of the aforementioned Diocese, is it required that all present from the clergy be present with their heads covered, or not?

III. According to the Ceremonial of Bishops, during more solemn Vespers, it is permissible to incense, in addition to the altar of the Most Holy Sacrament, also the altar dedicated to the saint whose feast is being celebrated. Therefore, is it permissible for the server at the altar of the saint to incense only the image of the saint, omitting the incense at the altar itself, or not?

And the aforementioned Sacred Congregation, after hearing the report of the undersigned Secretary and the opinion of another of the Masters of Ceremonies of the Apostolic See, decided to respond as follows:

I. Affirmative to the first part; Negative to the second part.

[*Latin ed. p. 56*]

56. Regarding Articles II. The rubrics are to be observed. Regarding Article III, the custom of the place is to be observed. And thus it was responded. On May 4, 1882, in BARCELONA. To the Most Reverend Father, a certain parish priest of the city of Barcelona explained that in some parishes of that diocese, the custom prevails whereby, in the celebration of the Sacrament of Matrimony, the annual blessing is sometimes omitted, if the spouses do not bring the ring to be blessed, as prescribed in the Ritual; consequently, the parish priests, in such cases, do not recite the following prayers. For this reason, the same parish priest humbly submitted these doubts to the Holy Congregation of Rites for a suitable declaration, namely: I. Do the prayers that begin with "Confirm this, O God" and end with "Oremus, look upon us" constitute part of the annual blessing? II. And, if so, are they to be omitted whenever the annual blessing is not performed? III. And, if not, are they to be recited, even if the same blessing is omitted due to the lack of a ring? The Holy Congregation of Rites, after hearing the report of the undersigned Secretary, and after considering the opinion of another Master of the Sacred Ceremonies and the Reverend Assessor of

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the same Congregation, has decided to respond to these doubts as follows: I. Negatively. II. and III. As provided in the first. However, it was deemed advisable to commend the matter to the pastoral concern of Your Eminence, so that you may consider whether such a custom of omitting the annual blessing should never be allowed, either by instructing the parish priests to always keep a ring with them, which, when the spouses are lacking one for this blessing, should be given to them for the proper celebration of the blessing, or by warning them to provide themselves with at least a ring of the lowest value. Rome, May 4, 1882. To the Most Reverend Father, as a brother, the Bishop of Barcelona. BONEAREN. Today, the Master of the Sacred Ceremonies of the Metropolitan Church of Buenos Aires, with the consent of his Most Reverend Archbishop, humbly requested of the Holy Congregation of Rites whether the following customs are permissible: I. The entrance of the Canons in the processions of Rogation days, who are not in pairs, as taught by the Ceremonial of Bishops; but rather, they are placed on either side of the Archbishop, while he wears only a cape, and they are dressed in rain capes? II. That in the same processions, the parish priests precede the Archbishop, and not the clergy of the Cathedral Church; because they are covered with rain capes, while the others wear a cloak? III. The entrance of the Confraternity of the Most Holy Sacrament after the baldachin.

[*Latin ed. p. 57*]

)ix i. Concerning, or rather, regarding the movements, whether from here or there, of the Clergy in Processions of the Body of Christ, and those which are customarily performed on the fourth Sunday of each month? Furthermore, this doubt was proposed to be resolved, namely: Whether those Clergy present in the sanctuary, some wearing the surplice and others not, may be permitted? The Sacred Congregation of Rites, with the Secretary present, having heard the opinion of another from the Masters of the Ceremonies of the Apostolic See, judged that the aforementioned customs, with the exception of the second, are not to be tolerated, and that the *Caeremoniale Episcoporum* must be observed entirely. To the doubt, however, the answer is negative. And thus it responded, and wrote. On May 4, 1882. APOSTOLIC BRIEF: Concerning the establishment of a single and identical formula for absolution, both general and at the point of death, and for the Papal blessing, to be used by the Tertiary Order of St. Francis and other families of the same Order, as well as by other Regular Orders and their tertiaries. LEO XIII, POPE. FOR THE SAKE OF FUTURE MEMORY. In order that all the faithful, of both sexes, who are enrolled in the Third Order of St. Francis, may observe the same laws and the same rites in performing the functions of their institute, it was deemed advisable to publish a single handbook or manual by means of the printing press. Many editions of this manual have arisen, concerning the formulas

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of general absolution, absolution at the point of death, and the Papal blessing, regarding which certain doubts or questions have been proposed to the Venerable Council of our Brothers, Prefects of Indulgences and Sacred Relics of the Holy Roman Church, in order to resolve them. Hence, the same Council, having considered and pondered all things, took care to refer to Us, through its Secretary, what it had deliberated concerning these matters. We, for whom the salutary and fruitful association of the Third Order of St. Francis has always been a delight, and for whom it is supremely important that it observe the sacred laws and rites of its institute, and that it be propagated and increase, especially in these times, having approved the deliberation of the Council, we judged that it should be made known to all through the Venerable Congregation of our Brothers, Cardinals of the Holy Roman Church, who are concerned with the preservation of Sacred Rites. The Congregation, obedient to our mandates, and desiring to fulfill the task entrusted to it in the best possible way, deemed it fitting, above all, to set forth all and each of the formulas for the general blessing and absolution, which...

[*Latin ed. p. 58*]

58. It is the practice among the Franciscan Tertiaries, and also among other families of the same Order, indeed among other Regular Orders and their affiliated Tertiaries, to use a formula that all would henceforth respectably employ in such blessings and absolutions, so that a single and identical formula might be established by all. Therefore, the aforementioned Congregation considered it necessary to notify all those for whom this matter might be of concern, so that they might, within a reasonable time, submit their views to the same Congregation. After exactly three years, and since nothing had been presented by any of the aforementioned Orders, the Congregation of Sacred Rites, having carefully examined everything, decreed as follows:

I. For the Absolution in articulo mortis, the formula prescribed in the Constitution *Pia Mater* of Pope Benedict XIV should be retained in all cases, with the addition of the Founder's proper name to the *Confiteor*: namely, "of the Holy Founder."

II. The Blessing of the Supreme Pontiff should be given with the formula approved in the Constitution *Exemplis Praedecessorum* of the same Holy Father, Benedict XIV, but only in those years and under the condition that this Blessing should never be given on the same day and in the same place where the Bishop administers it.

III. In the general Absolution for Regular Canons of any Order, and in the Blessing with a plenary indulgence for Secular Tertiaries, the following two formulas, proposed by the Most Reverend First Assessor of the aforementioned Sacred Congregation and approved by the same, should be used entirely, with all other formulas previously used being completely

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abolished and suppressed, namely:

Formula for the general Absolution for Regular Canons of any Order enjoying this privilege.

Ant. *Ne reminiscaris, Domine, delicta nostra, vel parentum nostrorum; neque vindictam sumas de peccatis nostris.*

Kyrie eleison.

Christe eleison.

Kyrie eleison.

f. Pater noster.

f. Et ne hos inducas in tentationem.

R). Sed libera nos a malo.

f. Ostende nobis Domine, misericordiam tuam. Et salutare tuum da nobis.

f. Domine exaudi orationem meam. Et clamor meus ad te veniat.

f. Dominus vobiscum. Et cum spiritu tuo.

OREMUS.

God, to whom it is proper always to have mercy and to spare: receive our supplication, that you may mercifully absolve us and all your servants who are bound by the chain of sins. Hear us, we beseech you, O Lord, and the prayers of those who confess.

[*Latin ed. p. 59*]

)ix i. Have mercy on us for our sins: that you may likewise show us kindness and grant us peace. Merciful Lord, graciously show us your unspeakable mercy: that you may cleanse us both from all sins, and deliver us from the punishments which we deserve for them. O God, who is appeased by repentance when we have offended through sin, look favorably upon the supplications of your people; and turn away the scourges of your wrath, which we deserve for our sins. Through Jesus Christ our Lord. Amen. After the prayers are completed, one of those present says the Confiteor, adding the name of the Founder. Then the priest says: "May mercy be with you, etc." "May you be pardoned, etc." Afterwards, he adds: "May our Lord Jesus Christ, through the merits of his most holy Passion, absolve you and pour forth his grace upon you. And I, by the authority of him, and of the Blessed Apostles Peter and Paul, and of the Supreme Pontiffs, grant this to our Order and to you, and it is entrusted to me in this matter, I absolve you from all bonds of excommunication, whether major or minor, of suspension and interdict, if you have incurred any such; and I restore you to the communion of the faithful, as well as to the holy Sacraments of the Church. Furthermore, by the same authority, I absolve you from all transgression of vows, and of the rule, constitutions, ordinances, and admonitions of our superiors, from all penances forgotten, or even neglected, granting you

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remission of all sins, by which you have offended against God and your neighbor, through human weakness, ignorance, or malice, and of which you have already confessed: In the name of the Father, and of the Son, and of the Holy Ghost. Amen. Formula of blessing with a plenary Indulgence for Secular Tertiaries and all others, granting the communication of privileges and graces with them, or with Regular members of any Order. Antiphon: "Let my prayer enter before you, O Lord; incline your ear to our prayers; Have mercy, O Lord, have mercy on your people, whom you have redeemed with your precious blood, lest you be angry with us forever." Kyrie eleison. Christe eleison. Kyrie eleison. Our Father. f. And lead us not into temptation. But deliver us from evil. f. Save your servants. v. My God, in you do I hope. f. Send them help from the Holy One. v. And defend them from Zion. f. Be to them, O Lord, a tower of strength against the face of the enemy.

[*Latin ed. p. 60*]

60 APPENDIX I. f. The enemy shall not prevail against us, and the son of perdition shall not harm us. f. O Lord, hear my prayer. 1. And let my supplication come before you. f. The Lord be with you. R. And with your spirit. [LET US PRAY. O God, whose proper attribute is always to have mercy and to spare: receive our supplication; that you, through the mercy of your piety, may mercifully absolve us, and all your servants who are bound by the chain of sins. Hear us, we beseech you, O Lord, and spare those who confess their sins to you, that you may likewise grant us indulgence and peace. Show us, O Lord, your unfathomable mercy, that you may cleanse us both from all sins, and deliver us from the punishments which we deserve for them. O God, who is appeased by repentance when offenses are committed, deign to regard the supplications of your people; and avert the lashes of your wrath, which we deserve for our sins. Through Jesus Christ, our Lord. Amen. Then, the following is said: I confess, etc. Have mercy, etc. May you grant, etc. The priest continues: Our Lord Jesus Christ, who gave to the Blessed Apostle Peter the power to bind and to loose, may He absolve you from all bonds of sin, that you may have eternal life, and may live forever and ever. Amen. Through the most holy Passion and Death of our Lord Jesus Christ; through the prayers and merits of the most Blessed Virgin Mary, of the Blessed Apostles Peter and Paul, of our Holy Father [Name], and of all the Saints, by the authority granted to me by the Supreme Pontiffs, I grant you a plenary indulgence for all your sins. In the name of the Father, and of the Son, and of the Holy Spirit. Amen. If this Indulgence is granted immediately after sacramental absolution, omitting the rest, the priest begins immediately with the words: Our Lord Jesus Christ, etc., and proceeds to the end, changing only the singular number to the plural. We fully approve of the decree of this aforementioned Congregation, and by our Apostolic authority, through the force of these letters,

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we approve, confirm, ratify, and command that it be observed by all, in all things, now and in the future. We decree that these Our letters shall always be firm, valid, and efficacious, and shall have and obtain their full and complete effect: thus, in the premises.

[*Latin ed. p. 61*]

ix. That all shall be judged and determined by whatever ordinary and delegated judges, even the Auditors of the Causes of the Apostolic Palace, and that it shall be null and void if, contrary to these, anything should happen through the will or ignorance of anyone, with any authority whatsoever. Notwithstanding, in order that this may be effective, Our regulations and those of the Apostolic Chancery regarding the matter in question shall not be repealed, nor shall other Apostolic Constitutions and Ordinances, nor those of the Third Order of St. Francis, or any other statutes, customs, privileges, indulgences, and Apostolic Letters, granted, confirmed, and renewed in opposition to the foregoing, which all and each of them, with their full and sufficient expression, and inserted verbatim, shall remain in full force, except that, for this occasion only, we derogate from the foregoing, and to all other matters, whatever they may be, deserving of special and individual mention and derogation to the contrary. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the 7th of July, 1882, in the fifth year of Our Pontificate. Th. Card. Mertel.

61. APOSTOLIC BRIEF: Concerning the insertion of certain feasts into the calendars of the universal Church and the Roman clergy, and the reform of the rubric concerning the translation of feasts. LEO XIII, POPE. FOR THE PERPETUAL REMEMBRANCE: Our Predecessors, the Roman Pontiffs, have never neglected at any time to keep in the minds of the Christian faithful, especially those whose duty it is to lead others by example, the memory of those holy men who, by their doctrine, virtue, and the excellence of their deeds, illuminated the Catholic Church while they lived on earth. They achieved this, among other things, by granting indulgences for the feasts of these saints, both in the universal and in particular churches, and by inserting the history of their lives and deeds in the Breviaries, so that those who are obliged to recite the divine office may each year repeat the memory of their virtues and deeds with praise. Hence, even in our own times, the Most Holy Pope Pius IX, Our Predecessor, heeding the wishes and prayers of many Holy Bishops who had come to Rome for the purpose of the Vatican Ecumenical Council, in the year 1874, established a Congregation of Sacred Rites, to which He entrusted the task of considering whether it would be opportune to insert in the calendar...

[*Latin ed. p. 62*]

APPENDIX I. To insert the Offices of certain Saints, who, having surpassed others in the pursuit of the work of the Apostles, labored more

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diligently for the building up and preservation of the entire Church, and for its extension among diverse peoples: These Offices pertain to the Saints Boniface, Bishop and Martyr; Justin, the Philosopher and Martyr; Cyril and Methodius, Bishops and Confessors; Cyril, Bishop of Alexandria; Cyril, Bishop of Jerusalem; and Augustine, Bishop of Canterbury. This particular Congregation of Sacred Rites, having carefully considered all matters pertaining to the matter, decided that the Office of St. Boniface should be extended to the entire Church with a double rite, and that those who requested the Office of St. Justin should receive it with the same rite; regarding the others, it was decided to defer the matter. Our predecessor approved and confirmed this decision. These things were done then. In the year 1880, We considered it fitting to grant the same honor to the holy brothers Cyril and Methodius, Apostles of the Slavic people, as We had previously granted to St. Boniface, as mentioned above. Furthermore, as the clergy and the faithful continued to request that other illustrious saints, about whom mention had been made, and also St. Josaphat, Bishop and Martyr of Polotsk, a shining light of Poland and Ruthenia, be honored in a similar manner, and as it seemed necessary to consider the requests made by the Roman clergy to the Apostolic See for the inclusion in the Calendar of the City of certain feasts of Saints who had illuminated the city itself with their examples and attained the end of their labors there, thereby ennobling it with their own merits: therefore, We deemed it necessary to re-establish the particular Congregation of Sacred Rites, which had been appointed by Our predecessor some time ago, and We charged it to consider appropriately how the aforementioned Offices, and others in the future if necessary, could be inserted into the Calendar, whether universal or of the Roman clergy. Therefore, approving and confirming the decrees made by Our venerable Brothers, the Cardinals of the Holy Roman Church and others who composed the aforementioned Congregation, and having been informed by Our venerable Brother Dominic, Cardinal of the Holy Roman Church, Prefect of the Congregation of Sacred Rites, by Our Apostolic authority We decree and command that the following Offices be inscribed in the universal Calendar of the Church with a lesser double rite: on February 9th, the Office of St. Cyril of Alexandria, Confessor; on March 18th, the Office of St. Cyril of Jerusalem, Confessor; on April 14th, the Office of St. Justin, the Philosopher and Martyr; on May 28th, the Office of St. Augustine, Bishop of Canterbury, Confessor; on November 14th, the Office of St. Josaphat, Bishop of Polotsk, Martyr; and that in the Calendar of the Roman clergy, the same Offices be inscribed with a similar lesser double rite.

[*Latin ed. p. 63*]

IX. I. The following Offices are inscribed: on the sixteenth of April, the feast of Saint Benedict Joseph Labre, Confessor; on the twenty-third of May, the feast of Saint John the Baptist de Rossi, Confessor; on the nineteenth of

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August, the feast of Saint Urban II, Pope and Confessor; on the eleventh of October, the feast of Saint John Leonard, Confessor; on the seventeenth of December, the feast of Saint Leonard of Porto Maurizio, Confessor. Furthermore, the feasts of Saint Cyril of Alexandria, on the twentieth of February; of Saint Cyril of Jerusalem, on the twentieth of March; of Saint Augustine of Canterbury, on the seventh of June; and of Saint Josaphat of Polotsk, on the fourteenth of December, are also included in the same Calendar of the Roman Clergy.

Moreover, with regard to both the universal Calendar and the Calendar of the Roman Clergy, so that there may be free spaces for the introduction of new Offices, We, by Our authority, decree and command that the General Rubric of the Roman Breviary, title X, concerning the Translation of Feasts, be amended in the following manner: "Double or semi-double feasts (with the exception of the feasts of the Doctors of the Church), if they are hindered by the occurrence of Sunday or a greater feast or Office in any way, are not transferred, but are observed on the day on which they fall, with a commemoration at both Vespers and Lauds, with a historical reading, or one of two or three readings, if such readings can be performed on that day; otherwise, such double or semi-double feasts are entirely omitted that year, as is provided for in the simple feasts in rubric title IX, number X, and title X, number VIII."

Finally, these present Apostolic Letters shall be appended to new editions of the Breviary at the end of the Rubric, provisionally, until a careful correction of the Rubric itself is completed by the Congregation of Sacred Rites.

We decree and command this, notwithstanding any Apostolic Constitutions and Ordinances, general or special, and any other contrary provisions, issued in universal or provincial or synodal Councils.

We wish that the same faith be given to copies or printed exemplars of these Letters as would be given to the present Letters if they were exhibited or shown, provided that such copies or exemplars are signed by a public Notary and sealed with the seal of a person holding an ecclesiastical office.

Given at Rome, near Saint Peter, under the Fisherman's Ring, on the twenty-eighth of July, in the year 1882, in the fifth year of Our Pontificate.

TH. CARD. MERTEL. CRACOVIEN.

The Most Reverend Albin Dunajewski, Bishop of Cracow, who presented this to the Congregation of Sacred Rites, stated as follows: In the Diocese of Cracow, according to ecclesiastical laws, the Anniversary of the Dedication of each consecrated church is celebrated on the day prefixed by the Bishop

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during the act of consecration.

[*Latin ed. p. 64*]

64. The custom [of celebrating the anniversary of dedication] continues to this day in that part of the Cracow diocese which has never been separated from the Cathedral Church. But after the establishment of the Diocese of Tarnów, that part of the Cracow diocese, which fell under the jurisdiction of Austria, under the reign of Emperor Joseph II, who enacted a law stipulating that, henceforth, the anniversary of the dedication should be celebrated in all churches on the day that coincides with the anniversary of the Cathedral, that is, on the third Sunday of October. And this law, without any regard for the Holy Apostolic See, prevailed in that part of the diocese. Now, since that part of the Diocese of Tarnów returned to the Diocese of Cracow in the year 1880, the clergy of that same part are divided, uncertain whether they ought to celebrate the anniversary of the dedication, as they were accustomed to do, on the anniversary of the dedication of the Cathedral of Tarnów, or rather, on the anniversary of the Cathedral of Cracow, according to the sacred [liturgical] calendar, that is, on the third Sunday after Pentecost, or whether they should return to the former custom of celebrating the anniversary on any day proper to the church itself. Therefore, in that part of the diocese, there are very diverse opinions, which cause the priests to be troubled, and for this reason, they await a definitive judgment. To clarify the matter, it should also be noted that in that part of the Cracow diocese, namely, the ancient part, the custom prevails of celebrating, besides the anniversary of the dedication of the church itself, also the anniversary of the dedication of the Cathedral, with a double first-class rite without an *octava* [octave].

Having explained these matters, the Most Reverend Bishop humbly proposed the following doubts to the Sacred Congregation, namely:

Doubt I. Whether that part of the Diocese of Tarnów, recently restored to the Diocese of Cracow, ought to celebrate the anniversary of the dedication of any church on the actual day assigned for the consecration, and whether it also ought to celebrate the anniversary of the Cathedral of Cracow with the due double first-class rite without an *octava*?

Doubt II. Whether, indeed, it ought to celebrate the anniversary of its own dedication, or whether it can celebrate it simultaneously with the anniversary of the dedication of the Cathedral of Cracow, as is customary in the neighboring Diocese of Tarnów?

Furthermore, the Sacred Congregation of Rites, after carefully considering the report of the undersigned Secretary, and the expert opinion of another of the Masters of the Apostolic Ceremonies, declared as follows:

To I. Affirmative, to both parts.

To II. Negative, or with the provision in the first.

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And thus it declared, and ordered it to be observed.

August 8, 1882.

[*Latin ed. p. 65*]

65. ENCYCLICAL LETTER from Our Most Holy Father Leo XIII concerning the patronage of Saint Joseph, together with the Virgin Mary, in imploring help for these difficult times. Although we have already, on several occasions, ordered that special prayers be offered throughout the world, and that the Catholic cause be commended to God with greater fervor; it should not seem surprising to anyone that we deem it necessary to impress upon minds once again this very duty, especially in this time. — In difficult circumstances, particularly when the powers of darkness seem to dare to attempt any evil against the Christian name, the Church has always been accustomed to implore God, its Author and Judge, with greater zeal and perseverance, and also to invoke the saints of heaven, especially the most august Virgin, the Mother of God, whose patronage she sees as most beneficial to her affairs. — Indeed, the fruits of pious prayers and hope placed in divine goodness become apparent sooner or later. — You know, Venerable Brothers, the times in which we live: times which are, to the Christian republic, no less calamitous than the most calamitous that have ever been. We see, among many, the very foundation of all Christian virtues, faith, disappearing; charity growing cold; a youth corrupted in morals and opinions; the Church of Jesus Christ being attacked with force and cunning from every side; a cruel war being waged against the Papacy; and the very foundations of religion being undermined with increasing boldness. It is now known more than words can express how low this decline has reached in recent times, and what is still being stirred up in the minds of men. In this difficult and miserable state, since human remedies are insufficient to cure the evils, it remains that all healing must be sought from divine power. — For this reason, we have deemed it necessary to encourage the Christian people to implore the help of Almighty God with greater zeal and constancy. Indeed, since the month of October is approaching, which we have previously decreed to be dedicated to the Virgin Mary of the Rosary, we earnestly urge that, as much as possible, that entire month be observed this year with religion, piety, and devotion. — We know that refuge is prepared in the goodness of the Virgin; and we are certain that our hopes, placed in her, will not be in vain. If she has been present in great times for the Christian republic a hundred times, let no one doubt that, renewed examples of her power and grace will be seen, if humble supplications are made.

[*Latin ed. p. 66*]

66. Should prayers and devotions be commonly employed? Indeed, we believe that the more earnestly they are offered, the more pleasing they

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will be. But there is also another purpose that We have in mind, to which, as is your custom, Venerable Brothers, you will lend your assistance. We believe that it would greatly contribute to making God more amenable to prayers, and to ensuring that He more speedily and abundantly protects His Church, if the Christian people were to become accustomed to imploring, with the utmost piety and confidence, the most holy Virgin, together with her most chaste Spouse, blessed Joseph. We judge that this is a desirable and welcome thing, and that it will be pleasing to the Virgin herself, for certain reasons.

Indeed, in this matter, of which We are now speaking publicly for the first time, We have observed that popular piety is not only widespread, but is also progressing with a steady momentum. For we have seen that the devotion to Joseph, which the Roman Pontiffs of former ages had gradually sought to promote and extend, has in this present time grown greatly and without any doubt, especially after Our predecessor, Pope Pius IX, at the request of many Bishops, declared the most holy Patriarch to be the patron of the Catholic Church.

Nevertheless, since it is of such importance that this veneration should be deeply rooted in the morals and customs of Catholics, We wish to move the Christian people, by Our voice and by Our authority. The reasons and grounds for this are as follows: Blessed Joseph is the patron of the Church, and in return, the Church promises him much in the way of her protection and patronage. He was the husband of Mary, and, as was believed, the father of Jesus Christ. From this, all his dignity, grace, holiness, and glory are derived. Certainly, the dignity of the Mother of God is so great that nothing greater can be conceived. But, since Joseph was united to the most blessed Virgin by a marital bond, it is certain that he attained to that most excellent dignity, by which the Virgin surpasses all created beings by a very great measure. For marriage is the greatest society and necessity of all, and by its very nature, it involves the communication of goods between one and the other. Therefore, if God gave Joseph as a husband to the Virgin, He certainly gave not only a companion in life, a witness of her virginity, a guardian of her honor, but also a sharer in that most excellent dignity itself, through that very conjugal bond.

Furthermore, he stands out among all others by his most august dignity, because, by divine providence, he was the guardian of the Son of God, and was regarded by men as His father. Consequently, it was necessary that the Word of God should humbly obey Joseph, and that He should be obedient to him in all things.

[*Latin ed. p. 67*]

LETTER 67 recounts the honor that children owe to their parents. Indeed, from this double dignity, duties naturally followed, which nature prescribed to fathers of families, so that the divine household, over which

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Joseph presided, was both the legitimate and natural guardian, custodian, and defender. Such duties and responsibilities he truly fulfilled, as far as his mortal life allowed. He diligently sought to protect his divine spouse and offspring with the greatest love and daily care; he accustomed himself to provide for their needs, preparing everything necessary for their sustenance and upbringing; he prevented the dangers of life, seeking refuge for their safety; and in the hardships and exiles of travel, he was always a companion, helper, and comforter to both the Virgin and Jesus.

But the divine household, which Joseph governed as a father, contained the beginnings of the nascent Church. The most holy Virgin, as the Mother of Jesus Christ, is also the Mother of all Christians, having brought them forth on the mountain of Calvary amidst the supreme sufferings of the Redeemer; and Jesus Christ, as the firstborn, is the brother of all Christians, who are his brothers by adoption and redemption.

For these reasons, it is understandable why the blessed Patriarch felt a particular responsibility for the multitude of Christians entrusted to him, from whom the Church is constituted; for this immense family, scattered throughout all lands, is, because he is the husband of Mary and the father of Jesus Christ, governed by his paternal authority. Therefore, it is fitting, and highly worthy of the blessed Joseph, that just as he once so piously protected the family of Nazareth, so now, with heavenly patronage, he should cover and defend the Church of Christ. These things, Venerable Brothers, are easily understood from the fact that, with the consent of the sacred liturgy, the opinion has taken root among not a few Church Fathers that the former Joseph, son of Jacob, foreshadowed the person and duties of this our Joseph, and also revealed the future greatness of the guardian of the divine family through his very brilliance.

Indeed, besides the fact that the same thing happened to both, and that the name itself is not without significance, you are well aware of other and equally clear similarities between them: first, that both received singular benevolence and favor from their Lord; and when both were entrusted with the management of a family, prosperity and good fortune followed the household, thanks to the grace of Joseph. Furthermore, the greater thing is that both were placed in charge of the entire kingdom by order of the king; and when, at that time, calamity brought about a shortage of fruits and a scarcity of grain, both, through their charity, provided for the Egyptians and their neighbors.

[*Latin ed. p. 68*]

68 The Letters, with excellent foresight, ensured that the king would decree that he be called the Savior of the world. — Thus, in that ancient Patriarch, one can recognize the expressed image of this [savior]. Just as the former was a model of domestic prosperity and beneficial conduct for his household, and soon benefited the entire kingdom in a marvelous way,

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so too, the latter, destined for the custody of the Christian name, must be considered as one who defends and protects the Church, which is truly the house of the Lord and the kingdom of God on earth. Indeed, all, whatever their condition or place, ought to commend themselves and entrust themselves to the protection of the blessed Joseph. — They have in Joseph the heads of families the most excellent model of vigilance and paternal providence; they have spouses, the perfect example of love, unity, and conjugal fidelity; they have virgins, the same model of virginity and a protector. Born of a noble lineage, those who contemplate the image of Joseph, should learn to maintain dignity even in afflicted fortune; the wealthy should understand that it is necessary to desire and strive with all their might to acquire goods. — But the poor, the laborers, and all those of lesser fortune, ought, by their own right, to flee to Joseph, and to learn from him what they should imitate. For he, of royal blood, joined in marriage to the most holy of all women, a father, as it were, of the Son of God, yet he spent his days working, and sought out, with hand and skill, whatever was necessary for the protection of his own. — Therefore, if one investigates the truth, the condition of the poor is not wretched; nor is it only devoid of disgrace, but it can, with the addition of virtue, greatly ennoble any labor. Joseph, content with his own and with little, bore the hardships that were necessarily connected with that poverty with a calm and elevated spirit, namely, as an example to his son, who, having accepted the form of a servant, although he was the Lord of all, voluntarily accepted the greatest poverty and destitution. — By considering these things, they should raise their spirits and feel compassion for the poor and all those who sustain life by the work of their hands; and if it is permitted to them to emerge from poverty and to seek a better condition, without violating justice, then they must not overturn the order established by the providence of God, for neither reason nor justice allows it. Indeed, to resort to violence, and to undertake anything of this kind through sedition and disturbances, is a foolish course of action, and those very evils that it intends to remedy are often made more serious. Therefore, the poor should not trust in the promises of seditious men, if they are wise, but should trust in the examples and patronage of the blessed Joseph, and also in the maternal charity of the Church, which, indeed, daily takes care of their condition. And so, to us, "Venerable Brothers, from your..."

[*Latin ed. p. 69*]

LETTERS 69, promising with episcopal authority and care: and indeed, not doubting that the good and pious will, of their own accord and will, do even more and greater things than what is commanded, we decree that throughout the entire month of October, in addition to the recitation of the Rosary, about which we have made other arrangements, a prayer to Saint Joseph be added, the formula of which will be sent to you along with

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these Letters: and this same practice shall be observed perpetually each year. To those who piously recite the aforementioned prayer, we grant an indulgence of seven years each time, and also a plenary indulgence.

It is indeed a most salutary and praiseworthy thing, which is already instituted in some places, to dedicate the month of March to the honor of the holy Patriarch through daily exercises of piety. Where it is not easily possible to institute this, it is at least to be hoped that, before the feast day of that saint in each town's church, a supplication will be offered in a triduum.

But in those places where the ninth day of March, dedicated to the blessed Joseph, is not included among the days of obligation, we urge everyone to observe that day with pious devotion, as far as possible, in honor of the heavenly Patron, as if it were a day of obligation, and not to refuse to do so.

Meanwhile, we offer you, Venerable Brothers, and to your clergy and people, a paternal Apostolic blessing, as a pledge of heavenly benefits and of Our benevolence, granted in the Lord. Given in Rome, at Saint Peter's, on the fifteenth day of August, in the year 1889, in the twelfth year of Our Pontificate. LEO XIII, POPE.

FROM THE HOLY CONGREGATION OF THE COUNCIL, CONCORDIA.

On the day of DIVISION OF PARISHES AND ERECTION, January 19, 1889, Session 24, item 18. Concerning the reform of the extreme plague of Venice, and precisely on the slope of the mountain called Asio, rises a nearly deserted, ruined, and dilapidated parish church dedicated to Saint Martin, Bishop, whose territory extends so widely that...

[*Latin ed. p. 70*]

70,000 paces in length; 15,000 paces in width: and extends in circumference 111,000 paces. But not only is this territory very extensive, but moreover, it is interspersed with countless hills and mountains, with numerous streams, and for the most part lacks bridges, and its banks are steep on all sides, so that, especially in winter and during periods of heavy rain, it becomes almost impassable due to the excessive amount of snow and water. Within the boundaries of this parish, in the past century, there were three principal towns, namely Clauzetto, Vito d'Asio, and Andamies, which constituted distinct municipalities. Now, however, although the territory is divided into five larger villages, since to the first three, two others have gradually been added, namely Canale di Vito d'Asio and Canale d'Arzino, or of St. Francis; nevertheless, there are two municipalities, namely Clauzetto, and from there, the other four towns are united. The parish priest has five assistants, each in their respective towns, who reside in their churches, which are baptismal churches, except on certain more solemn days, when

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they ascend with the parish priest to the parochial church of St. Martin, to celebrate the sacred functions there. The parish priest, who has his fixed residence in the town of Clauzetto, resides there on weekdays, but on holidays, he travels alternately from place to place and visits each town successively. From this complex and difficult administration of pastoral ministry, it has happened that, from ancient times, rivalries and animosities have arisen among the inhabitants of Clauzetto and Vito, and the other towns: for they bore ill will, because the town of Clauzetto, by virtue of the parish priest's residence in that place, seemed to dominate the others. To cut short these disputes and contentions, since nothing else proved effective, the inhabitants of Vito have repeatedly, and especially in recent times, insisted on obtaining their own and independent pastor, both ecclesiastically and civilly. In order that these desires might be more easily fulfilled, the superiors, in

[*Latin ed. p. 71*]

The Provincial Council, convened on March 2, 1879, decreed that congregations should be established for the purpose of erecting independent parishes for each church. While these matters were being addressed, the church of St. Martin became vacant due to the promotion of the parish priest to another benefice. Taking advantage of this opportunity, delegates from the three towns of Viti de Asio, Anduini, and Canalis Viti, appointed by the Sacred Council, appeared and requested the following: 1. That the parish of St. Martin de Asio be divided, in accordance with the existing division among the five aforementioned parishes. 2. That the churches of a) St. Michael the Archangel in Viti de Asio; b) St. Margaret in V. and M. Anduini; and c) St. Anthony in Padua, Canalis Viti, which had already established suitable congregations, be erected into parishes. Furthermore, the church of St. Usvaldi Casiaci should also be erected into a parish, once its congregation was established.

Summary of the Discussion: The representative of the three towns, after presenting the matter, recalled that the supreme law of the Church is the salvation of souls, and therefore, according to this law, both dioceses and the boundaries of parishes must be governed or regulated; as has been consistently observed in practice. However, he cautioned that this should not be done rashly, but only with evident necessity or utility, as stated in Chapter 33 concerning benefices and dignities. This is also confirmed by the Council of Trent, Chapter 6, Session 7, concerning reforms, and especially Chapter 4, Session 21, where it is stated that bishops may establish new parishes, even against the wishes of the rectors, in those parishes "in which, because of the distance or difficulty of the place," the parishioners cannot easily access the sacraments and divine services, according to the form of the Constitution of Alexander III, which begins with the words "Ad audientiam." Furthermore, the speaker demonstrated that this necessity or utility exists, not only based on the testimony of his fellow citizens, but also

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because it favors the division [of the parish].

[*Latin ed. p. 72*]

72. The Patriarch of Venice and the Bishop of Concordia report that for a parish priest to come from more distant places requires a journey of a full day, a circumstance more favorable in certain seasons; however, during the winter, due to ice and muddy roads, it becomes impossible. And this impossibility of accessing the parish priest completely contradicts the rule given by the Council of Trent in Chapter 1, Session 23, where it is expressly stated that parish priests "by divine command are bound to know their flock, and to feed them with the word of God, with the administration of the sacraments, and with all good works and example." However, the parish priest cannot fulfill this duty for another reason, because on certain solemn days, for example, at Easter and the Nativity of our Lord Jesus Christ, he must meet with his assistants at the church of St. Martin. On other Sundays and feast days of each month, he merely transfers himself to one or the other chapel, only for the purpose of celebrating the functions. Therefore, since the parish priest of St. Martin is unable to know his flock, or to feed them with the word of God and the administration of the sacraments, the speaker concludes that the division of the parish of St. Martin and the erection of new parishes should be decreed; and that this remedy is not only opportune and useful, but also necessary. Furthermore, nothing bad will happen to Clauzetto from this division; on the contrary, its spiritual care will be provided for even more; since, while the parish priest must go here and there, especially on feast days, it will happen that Clauzetto, although it is the ordinary seat of the parish, will often not enjoy his presence. To all this, it must be added that the parish rectory of St. Martin is insufficient to fulfill its duties and to provide decent support for the assistants, even if it receives some subsidy from the government. Given these circumstances, and considering also the difficulty and severity of the work, and the continuous travel, it is, according to the testimony of [the parish priest], very difficult to [fulfill the duties].

[*Latin ed. p. 73*]

CONCORDIEN. 73 It is necessary to find a priest who will undertake so burdensome a duty. Besides the reasons already mentioned, another matter of the greatest importance arises, which makes the division of the Church of St. Martin and the erection of new parishes not only useful, but necessary; and this matter consists of disputes and contentions which, between the families of Clauzetti and Viti of Asio, have raged from the most ancient times, even to the point of bloodshed, as historical documents clearly demonstrate, and the Bishop entirely confirms. Furthermore, given the hatreds, disputes, and contentions existing between the regions and towns of the same parish, it is necessary to proceed to the erection of new

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parishes, as is taught, among others, by DD. De Luca, *Discipline*, 16, section 21, chapter 4, concerning ecclesiastical councils; by Benedict XIV in the Constitution *Sacrosanctae*, and by the Sacred Congregation of Councils in six hundred resolutions, especially in *Papien*, September 12, 1878; in *Lünen*, July 12, 1815; in *Ventimilien*, August 8, 1818; and in *Piacentina Paroecia*, November 28, 1819. It may be objected that what has been stated concerning the hatreds and contentions is not in conformity with the truth, or that it has been exaggerated or misrepresented; but the Bishop, and indeed the Patriarch himself, confirm this; and they further add that it is to be feared that the inhabitants of the three towns would cause disturbances if, once again, their wishes were disregarded. The Bishop of Concordien asserts that, for this reason, it is, if not impossible, at least very difficult to find a priest who would undertake to govern the aforementioned parish. In this regard, it is not surprising that the Bishop's wish is that this division, which he considers not only useful but necessary, should be carried out as quickly as possible. Furthermore, how much weight should be given to the Bishop's judgment is taught by Benedict XIV in the Constitution, with these words: "Little attention should be paid to the testimony of that Pastor, to whom the divine mandate is given to recognize his sheep." This is confirmed by L. Ferraris in *Bibliotheca Canonica*, V, Dis.

[*Latin ed. p. 74*]

74 CONCORDIEN. Memorial, no. 42, wherein it is stated that, in matters of this nature, which are to be decided based on the bare facts arising from the particular quality of each individual case and its specific circumstances, one must follow the judgment of the Bishop, as is customary, according to the interpretation of the Holy Congregation of Councils. However, what seems to be the crux of the matter is that the Church, when establishing new parishes, already has a suitable parochial structure in mind. Indeed, given the distance between places and the difficulty of travel, it is evident that new parishes should be established, provided that sufficient revenues are available to support the parochial churches, as is derived from Chapter "Ad Audientiam" 3 concerning church buildings, and also from the constant, more recent practice of the Holy See, as can be seen in the "Ephemeris," entitled "Acta S. Sedis," Vol. 7, page 43, in the notes. Finally, the speaker, informed by the Bishop, points out that the Church of St. Martin is not only solitary and deserted, but also suffering from poverty, dilapidation, and ruin; and that, in the present condition of affairs and of souls, there is little hope of its restoration. Given these circumstances, it is possible to proceed with the union, or division, or suppression, of any churches, even parochial ones, whenever either the parochial churches, due to their poverty, cannot be provided with a pastor, and their condition does not maintain their dignity; or they are so dilapidated that they cannot be restored or repaired, as is derived from Chapter "Exposuisti nobis" 33 concerning endowments

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and dignity, and from the Council of Trent, Session 21, chapter 5 concerning reform, and also from chapter 7, Session 21 concerning reform. Furthermore, it cannot be said, for the sake of excluding either necessity or utility, that sufficient provision is made for the salvation of souls by means of chaplains who exercise the office of a parish priest in the churches assigned to them. Indeed, according to Chapter "Extirpo," no. 3, §, the parish priest, who has an endowment, must serve the parochial church not through chaplains or vicars, but through himself. To this, the Council of Trent adds, in chapter 13, Session 24 concerning reform, where it instructs bishops to ensure that, with the people clearly divided into certain and proper parishes, each has his own perpetual and particular parish.

[*Latin ed. p. 75*]

CONCORDIEN. assigns 75 parishes, so that those who can administer them may be known, and from which parish they may lawfully receive the sacraments. And the reason is, firstly, because not all things are done in chapels, to which the parish priests are bound by common and Tridentine law. Van Espen, *Ius eccl. univ. par.* 2, sect. 2, tit. 1, Cap. 3, no. 30; secondly, and especially because, as Reiffenst. transmits in his book III, *de Cleric. non resid.* § 3, a parish priest is considered to be the person of Alet and Monteu da Po. And this is even more to be said in this matter, when it is a question of removable chaplains, who are considered as mercenaries and unlearned in the law, and who, being deprived of their own authority, are neither stable, nor do they devote their efforts with sufficient zeal and charity to the flock entrusted to them. Ursaya, *Discept. eccles.*, vol. I, part. 1, disc. 14, no. 02; De Luca, *De deam.*, disc. 12, no. 12; S. Rota, decision 78, no. 33, before Ansaldo. Moreover, if it sometimes happens that the Holy Congregation, rather than through the division of parishes, considers it necessary to meet the needs of the parishioners through the appointment of coadjutors; the speaker observes that this was once valid in the forum, but with the passage of time, it has withdrawn from the court, and the Holy Congregation itself has gone into a different opinion, as can be seen in the *Ianuen*, on the day of the division, August 14, 1875; and this opinion has been adopted, because the proper parish priest better protects and knows his flock than a chaplain, coadjutor, or custodian of another church; for they do not provide everything to the faithful, nor do they do so as if they were their own. However, even though the appointment of coadjutors is not alien to the provisions of common law and the practice of the Holy Congregation; nevertheless, the speaker maintains that the erection of new parishes should be encouraged, because the Bishop declares that, due to the lack of a suitable parish, priests cannot be found who are willing to perform the duties of vicars. Indeed, it has often happened that, now one, now another, subsidiary church has remained without a coadjutor for many years, and this inconvenience is also being verified in the present.

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Therefore, since there can be no doubt about the existence of the causes that led to the division of the parish of St. Martin and the erection of new parishes,

[*Latin ed. p. 76*]

76. CONCORDIEN. proclama necesse, vel utile, et postulat ut preces pro divisione parochiae et constitutione paroeciarum, secundum votum Episcopi, sint acceptae. QUAE DIVISIONI ET ERECTIONI CONTRASTANT. Clauzetti, patronus, aliter observat, quod in proposito non sit tam de dismembramento, quam de suppressione veteris paroeciae, et subsequente divisione territorii in partes minores. Praeterea, praeter constitutionem novarum paroeciarum Viti, Anduini et Canalis Viti, etiam facultatem poscitur, ut in futuro, quando opportunum erit, quarta paroecia in loco Casiaco erecta sit. Hoc, dicit, "est maxime odiosum, et adversatur iuri, quod iubet, si ecclesia parochialis collabat, reficiendam esse in eodem loco, *Barboza ad Conc. Trident., cap. 7, n. 24; si vero angusta sit, ibidem ampliandam; si demum, ex populi migratione, fidelibus remota evenerit, per constructionem novae ecclesiae in loco opportuniori, absque tamen dismembramento, succurrendum esse, *Pignatelli, Cons. 230, n. 74. Suppressio petita paroeciae et territorii divisionem non solum odiosam in iure esse, sed etiam in facto inconsultam. Nam praeter pagos, qui proprium et peculiarem pastorem deservant, alii multi vici habentur, de quibus nihil dictum est in precibus, et de quibus, ideo, ignoratur cuius iurisdictioni subiiciendi erunt, et utrum novae adscriptioni acquiescere velint, an potius sub veteri regimine manere, inter quos vicus Canalis Arzuini numeratur, addit. Nec valet argumentum comitiorum Viti habitorum ad dismembramentum petendam, siquidem communitas Clauzetti ad ea invitata non fuerat, immo statim ac rem cognovit, per municipes suos reclamavit. Iamvero in re tam gravi, communitatem, quae dimidium totius parochiae constituebat, praetermitti non posse urgit. Et asserit, quod Praefectus Provinciae et oeconomatus beneficiorum vacantium declarant horum comitiorum votum in pretio haberi non posse. In tuto posito, paroeciae suppressionem et territorii divi-

[*Latin ed. p. 77*]

CONCORDIEN. 77 The argument for a division is deemed to be unfounded, and it is not surprising that the Ordinary, a few years ago, namely in the year 1880, considered it neither necessary nor opportune, and therefore rejected the petitions of the inhabitants of the three villages. And indeed, the argument for a division does not hold up under scrutiny, as it is claimed that a certain agreement led to the three villages of Clauzettum, Vitum, and Anduinum uniting into a single parish. But, even granting that this was the reason for the union, it does not necessarily follow that a division is required today, because, among other things, there is no unanimous agreement among the parties involved, and indeed, Clauzettum is

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entirely opposed to the proposed division. Furthermore, it is not true that the church of St. Martin is deserted and dilapidated; for this refers to the physical building, not to the pastor, who cares for the souls entrusted to him, and who watches over, visits, feeds, and governs his flock, either personally or through five assistants who work in the main villages, and who are quite sufficient for the 5200 faithful. Finally, it is not true that the distance of the people from the church of St. Martin and the difficulty of the roads are significant obstacles. For a few years ago, these were not recognized by the Ordinary as truly serious and burdensome. It seems that both the Bishop and the Patriarch have now changed their opinion; but it is more likely that they have done so based on reports from those involved, rather than on their own and certain knowledge. However, even given the gravity and difficulty, the necessity of a division does not appear to be evident; because the needs of the souls are adequately met through assistants and through several sacramental and baptismal churches, so that there is no need to resort to the objectionable remedy of division; and this has been the constant practice of the Holy See, as is evident from the document of the Parish of Aesina, dated June 12, 1751, *Cor Elephantutio*, and as is confirmed by Barbosa in *ad Conc. Trid. sess. 21* cap. 4* num. 10 *De parochis* dis. 35* num. G; and by Monacelli, among others. Furthermore, the alleged difficulty of the roads is not so great, as can be seen from the testimony of the village elder of Veli, who asserts that the roads are passable by carriage and are well maintained.

[*Latin ed. p. 78*]

78. CONCORDIA. And although the patron is not absent, in these latter times, the Sacred Congregation has inclined more towards division than towards the delegation of vicars, in order to provide for the spiritual care of the faithful; nevertheless, it has happened that, whenever the possibility of a new parish arises, the division is enacted. But in this case, the situation is so far from being suitable for four parishes that even what exists is not sufficient. Therefore, division is not only unnecessary, but indeed harmful; and this is all the more evident because, in the present situation, besides the parish priest, there are several priests who, although assigned specifically to their respective districts, are nevertheless sent to the entire population, and all the faithful have the right to turn to them without distinction. This arrangement, especially with regard to sacramental confessions, is both commendable and useful. Indeed, a division of parishes can even be a refuge for establishing new parishes, for the tithes. It is clearly evident from the fact that the Government increases the parish of St. Martin by 500 florins each year that these tithes are a considerable sum. Furthermore, if, according to Luke 12:5 and 8, it is always declared that tithes should remain with the mother church, so that the ancient church may not suffer damage; in this particular case, when the income of the mother church

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is not sufficient even for the proper support of the parish priest himself, *according to the Council of Trent, Session 2, Chapter 4*, nothing should be taken from them to endow a new parish. What is offered by the inhabitants of Viti and Anduini, a roof and a building, are not seen, because most of it is obtained through contributions and loans from private individuals. Soon, difficulties will arise from the civil and political authorities; for in civil law, the principle is established, confirmed by many judgments, that the status of a parish cannot be changed so easily, and that a parish cannot be divided, especially when two communities dependent on the same parish priest do not agree among themselves. Civil law governs both communal law and provincial law.

[*Latin ed. p. 79*]

CONCORDIEN. 79 Having considered these matters from various perspectives, the objective was to resolve the question of whether and how to grant permissions for prayers concerning the division of the parish church of Saint Martin of Asio, and the erection of new parishes in such cases.

RESOLUTION. The Sacred Congregation of Councils, after carefully weighing all factors, gave the following response on June 8, 1889: Affirmative, at the prudent judgment of the Bishop; provided that due consideration be given to the suitability and appropriateness for the parishes to be erected.

FROM WHICH WE MAY GATHER:

I. That the supreme law in the Church is the salvation of souls, and that, in accordance with this law, not only parishes, but also dioceses, must be governed or regulated.

II. That the union, division, or separation of parishes must be based on evident necessity or utility.

III. This must be verified, especially when, due to the distance of the location or the difficulty of access, the parishioners are unable to attend the sacraments and hear the divine services without great inconvenience.

IV. In the presence of distance and difficulty of access, new parishes should be erected, provided that sufficient resources are available to support the new parochial churches.

V. In accordance with the Council of Trent, Session 23, chapter 1, pastors are bound by divine precept to know their flock, and to feed them with the word of divine preaching, the administration of the sacraments, and by all works and example.

VI. That antipathy, animosity, or hatred between regions or towns within the same parish is a sufficient reason for the division or separation of the parish, and for the erection of new parishes, and that this has been the

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constant practice of the Sacred Congregation.

VII. That it is possible to proceed with the union, division, or suppression of any churches, including parochial churches, whenever the parochial churches, due to their own poverty...

[*Latin ed. p. 80*]

80. CONCORD. Parishes, without a pastor, cannot be properly provided for, and their condition cannot be maintained with due regard for their dignity.

VIII. It can also happen that these [parishes] are united, divided, or suppressed, whenever they are so decayed and ruined that they cannot be restored or reformed.

IX. From the Council of Trent, chapter 13, session 24, concerning marriage, it is decreed that, for the safer salvation of souls, each parish should have its own permanent and particular pastor, who may know them and from whom alone the sacraments may lawfully be received.

X. Therefore, the pastor ought to serve the parish church himself, and not through assistants or vicars; firstly, because not everything is done in chapels, to which pastors are bound by common and Tridentine law; and secondly, because, especially in the parish of Alet, the person appointed is considered to be of great importance.

XI. This is all the more to be observed, considering that the matter of permanent chaplains is a matter of opinion, since they are considered by law to be mere employees and inexperienced, and they improperly care for the flock that is not their own.

XII. Formerly, at the Sacred Congregation of Councils, it was held that the needs of the people were better met through the appointment of vicars, rather than through the division of parishes; but this has since lapsed with the passage of time, and the Sacred Congregation of Councils has gone in a different direction.

XIII. In the matter of the Sacred Congregation of the Oratory, the division of the parish of Saint Martin and the erection of new parishes have been considered, provided that suitable resources for the erection of new parishes are available, because reasons are present that require the invoked division and erection (1).

(1) *Recueil*, Vol. I, 520, 543; Vol. III, 396; Vol. XII, 287; Vol. XIII, 60, 293, 299; Vol. XVIII, 315.

[*Latin ed. p. 81*]

In TARENTINA, on the day of the Feast of the Purification of the Blessed Virgin Mary, February 16, 1889. Regarding a summary of prayers. A concise account of the matter. The heirs of the deceased Dominicus, through the Archbishop of Taranto, state that, some years ago, due to economic hard-

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ships, they first granted the property in emphyteusis, and then, through direct ownership, they divested themselves of it, and sold a certain rural estate upon which was inscribed the burden of one Mass, to be celebrated on all days of precept, and an alms of 1.27 lire to be given. However, they neglected to mention this burden both when granting the property in emphyteusis and in the sale of the property through direct ownership. Therefore, they endeavored to ensure that the legacy was fulfilled as long as they were able to do so. But, the Ordinary continues, pressed by poverty, they have, with great difficulty, until recently, been able to provide for the Masses; but now, since they are no longer able to do so, they request a reduction of this burden from the Apostolic See. Hence, the Ordinary himself requested that the number be reduced to seven, with a stipend of one *libella*. And when asked by the Archbishop to report if there were any who might have an interest, and whether the buyer was obligated to satisfy this burden, he responded negatively to both. A Synopsis of the Discussion. Indeed, when it is said that the burden is inscribed on the property, and therefore is real, the owner of the property appears to be bound by himself to fulfill the legacy. But this discussion is merely idle; for the buyer, having purchased the property for a higher price than he believed it to be free of encumbrances, could not justly be required to satisfy the Masses, unless the sellers returned to him a portion of the price received; but they are unable to do so. Therefore, the matter appears to have fallen into a case of impossibility. Nor does it appear that there was any fraud or fault involved in this. Elsewhere, the petitioners offer clear testimony of their conscience and piety. *Acta, Tom. XXII, fase. C C LTV. 6*

[*Latin ed. p. 82*]

82. It is said that the clergy of TARENTINA have fulfilled their obligations, even though they have carried out these duties with difficulty, and even though they were not drawn to this task by any external bond. In these circumstances, it was deemed necessary for the Most Eminent and Reverend Fathers to consider whether there existed in this case a just and necessary cause, as required by the Council of Tridentinum in chapter VI, session 22, which would allow for the alteration of the pious intentions of the faithful and the reduction of the obligations of the Masses. With these premises, the question was raised as to how the prayers should be granted.

RESOLUTION. The Holy Congregation, after consideration on February 18, 1889, decided to respond: "Concerning the granting of absolution for the past, and concerning the future, according to the will of the Bishop, the legate shall, as far as possible, take care to guide the pious intentions of the faithful."

FROM MONTIS CASSINI. On March 23, 1889. Through a summary of petitions.

COMPENDIUM. Raphael Patete, parish priest of the church of Saint

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Mary Virgin of Gratiarum, located in the territory of Montis Cassini, humbly presented a petition to the Most Holy Father, explaining that he obtained the parish through canonical appointment; however, during a dispute among his parishioners while he was attempting to restore peace, he was accidentally wounded by a projectile, which has not yet been removed since 1886. As a result of this wound, his own life has been in danger for a long time, and due to the intense pain, he was forced to abandon the administration of the parish, which he only resumed one year ago. But since that wound, his physical strength has steadily diminished, making it difficult to administer this parish, both due to the severe pains with which he is often afflicted, and due to the geographical condition of the parish, which extends widely through mountains and valleys. Therefore, he implores the Holiness of Your Eminence to grant him a transfer to the small parish of Aquaeviva in the same diocese.

[*Latin ed. p. 83*]

In the matter of GASSINI 83, the Bishop, having been requested by the parties involved, stated that petitions are founded on truth, and that the petitioner is worthy of the grace sought.

A discussion arises concerning the decree in Synoptica, chapter 18, session 24, concerning reforms, where it is ordered that parishes be assigned through competition and examination, which, it seems, could not be observed in the case of a translation. Furthermore, it appears that the rights of others who intend to compete for the vacant parish would be harmed by this. However, it must be noted that the Sacred Congregation has, on just grounds, granted and permitted dispensations from the requirement of competition, allowing a simple priest, after a prior examination of his suitability, to be appointed to a parish. This seems more easily permissible in the case of a translation, since the priest who is being transferred has already been proven, not only through competition and examination, but also through a long period of service. The rights of others who wish to compete are not truly harmed, since they are still given the opportunity to apply for the parish that becomes vacant through the translation. Indeed, precisely for this reason, it appears that the law of Trent concerning the assignment of parishes, which applies only to those who have been approved through competition and examination, remains at least in substance, in the case of a translation. Furthermore, since the rights of others are not violated in the case of a translation, several Doctors hold that Bishops can transfer a priest from one parish to another ″if, as ReifTenstuel states in *De r er. per mut.*, number 38, a serious reason requires it, or because the cleric is less suitable for the duties of that benefice, or in that place, etc.″ And the Abbot agrees in chapter *Quaesitum* 5 of the same title, numbers 7 and 8, and Innocent in chapter *Nisi* of *De renimi*. Engel, in the same place, number f n., presents the following argument, citing chapter *Quaesitum* at the

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end, where it is stated: "If the Bishop has examined a necessary reason, he can lawfully transfer persons from one place to another, so that those who are less useful in one place may be able to serve more usefully in another."

[*Latin ed. p. 84*]

84. NULLIUS – TERRITORIAL ABBEY OF MONTECASSINO. Indeed, as is stated in the work of Reiffenstuel, cited above, number 39, "the doctrine applies even if the cause for the removal of the beneficiary is without his fault, for example, if a grave aversion and hatred arises in the people against the parish priest, so that his words produce no further effect; the people despise the divine, or scandal arises, etc., as Innocent, cited by the Abbot, rightly observes in *L. c. Ratio est quia bonum publicum debet praeferri privato*, canon 39, *Decret. 7, q. 1*. – there: – "For the utility of many must be preferred to the utility or will of one." The Sacred Congregation of Bishops and Regular Canons also holds this view, as is related by Bizzarri in his *Collectanea*, concerning the removal of a parish priest by the people on October 15, 1601, in *Alben*. Finally, D'Annibale summarizes the matter in his own words in part 3, number 61, in a note: "Although the Bishop can, even as a delegate of the Holy See, transfer a parish priest to another parish for a necessary reason, chapter 5, *De rer. permut.*, Sacred Congregation, January 27, December 18, 1857. Acta S. S. v. XI, number 159, for example, if he causes scandal in his parish, or if the wicked people hate him. Paris, *De resign.*, Reiffens. in III, lib. 1, 19, number 30, Benedict XIV, *C. Apostolici ministri*. Furthermore, more can be found in this sense in Zamboni, volume 4, *Conclus.*, Sacred Congregation, concerning the parish priest, page 14, regarding removal and private matters. Therefore, it is certainly permissible, at least, for the Sacred Congregation to grant this; when a transfer is requested for the sake of his health, and because of a physical impossibility of properly performing his pastoral duties. With these considerations, the question was raised as to how the requests should be handled. RESOLUTION. The Sacred Congregation, after deliberation on March 23, 1889, decided to respond: "For the granting of this, a prior examination before three pro-synodal examiners is required."

[*Latin ed. p. 85*]

85. VENETEN. MARRIAGE. On May 4, 1889, in Lorient, a town in the diocese of Vannes, in the parish church of St. Ludovic, Aloysia Laurent and Ernest Pretot celebrated the sacred marriage after the civil ceremony. She was 18 years old, and he was already holding a position of authority and had passed his fiftieth year. The young woman stated that she was compelled to marry Ernest by serious prayers and threats from her parents, and that she married with tears and great reluctance of spirit. Whatever the case, it is certain that the marital union, which lasted for 14 years, was most unhappy, especially for the woman, who was eventually afflicted by such

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a severe nervous disorder that she seemed to be on the verge of madness. And therefore, she was confined to the local asylum in Ivry, where she still endures harsher trials. Afterwards, under the care of her father, and separated from her husband, she spent several years in the monastery of the Augustinian nuns in Meaux; until, after her father's death, and after the divorce law had been enacted in Gallus, she legally requested and obtained a separation from her husband. Having been legally freed, she did not immediately enter into a new marital agreement, but instead married the military tribune Geoffroy. However, spurred on by the prompting of her conscience, the following day she went to the court in Paris, requesting that the marriage she had entered into with Ernest Pretot be declared null and void, due to coercion and fear. And the Parisian court, through a delegation from the Sacred Congregation of the Council, investigated the case: it summoned the plaintiff, her mother, and four witnesses proposed by the plaintiff, and heard their testimony; the fifth, namely the nun Bertham Lahalle, was summoned by the Ordinary of Baltimore. But the husband, although repeatedly requested by the Ordinary of Bordeaux, where he was then residing, and although initially somewhat inclined to give testimony, ultimately refused.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 86*]

86. VENETEN.S, however, did not yield until the very end. Indeed, to prevent further harassment, letters were issued, prohibiting any further action. In this state of affairs, the Parisian tribunal, after considering the arguments and allegations of both the defender and the plaintiff, reached a judgment, declaring the marriage null and void, based on coercion and fear. However, the defender of the marriage appealed to the Sacred Congregation. A Synopsis of the Arguments: DEFENSE OF THE WOMAN. The woman chose a defender who published his argument in five sections. In the first, he called for the re-examination of those involved in the case, arguing that this would allow for an assessment of the honesty and credibility of the witnesses; and he noted that, apart from the plaintiff's mother, the witnesses were: the widow Ouizille and Besné, the former a friend, the latter the plaintiff's maternal aunt, Elias Lahalle, a ship captain, Ayrault, a substitute in the Parisian civil court, and Bertha Lahalle, the abbess superior of the monastery of Bon Secours in Baltimore, all of whom were commended for their good reputation, their distinguished service, and their advanced age. Therefore, he argued, it would be safe to dismiss any suspicion against them and to place full faith in their testimony. It is not surprising that there are few witnesses, he argued, since the event occurred more than five years ago, and many have died, some of whom would have been able to testify to matters of great importance. However, those who have been brought

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forward are sufficient, as Reiffenstuel teaches in the common title 40, book 1, number 89, that "it is more to be believed that two witnesses testify under fear, along with a suspicion, than a thousand deny, or depose of their own free will... because those who deny of their own free will, deny an internal act known only to God; whereas those who deny under fear, along with a suspicion, testify to threats, beatings, or similar things, which are indices of fear that are perceived by the senses of the body." Rota, apud Farinacium, dec.

[*Latin ed. p. 87*]

VENETEN - 87 147, Barbosa Collect, lib. 4, Beeret, cap. "De litteris Be consang. et affin." At in casu quinque sunt testes, quibus mater adiici posset, omnes fide digni, et cum coniectura, idest, cum indiciis, factis, et adminiculis pluribus de metu deponentes: insuper universi omni exceptione maiores, cum nec matertera, nec forte mater, aliqua exceptione repelli possit. Nam in causis matrimonialibus consanguinei et familiares non habentur suspecti ex clara praescriptione cap. videtur nobis 7, "De iis qui matrim.," etc., quia obiecta domesticitas non minuit, sed potius auget fidem testis in hac materia, ratione praescriptae scientiae et veritatis, > Rota, loc. cit. num. 10. Deinde patronus de Aloysiae eiusque parentum indole disserens, ait, omnes testes affirmare, Aloysiae patrem, virum illustrem publicis negotiis deditum, ac religiosum fuisse; at honorum cupidum, imperiosum ac proclivem ad iram si contradicebatur. Mater autem viro obsequentissima, sed et ipsa ambitiosa ac obstinata. Uterque filiam saepe blandiebatur, at non raro etiam absolute ei dominabatur, quin ipsa contradicere posset. Nec refert aliquos testes amorem ac humanitatem parentum erga filiam extollere; nam non raro contingit, parentes in iis de quibus non satagunt maxime indulgentes filiis se praebere, dum in aliquo negotio, quod eorum valde interest, filios obsequentes omnino volunt. Atque hoc prorsus in themate accidisse dicit orator, ut ex sequentibus ostendet. Sed interim, ut notet quantae pervicaciae fuerint Aloysiae parentes, recolit patrem misertum tunc solum esse filiae, et separationem eius a viro permisisse, cum mentem ac vitam Aloysiae in discrimen prorsus cognovit. Dum mater obstinatior adhuc fuit, nam tum quoque voluisset ut Aloysia necessitati acquiesceret et invisum hominem amaret; quam sententiam vix hodie atque aegre mutavit, ceu expresse fatetur Elias Lahalle. Vicissim Aloysia egregiae indolis, religiosa et honesta describitur a moniali Lahalle, aliisque testibus; praesertim.

[*Latin ed. p. 88*]

88 VENETEN. The parish priest, Father Aloysius of Lorient, and Father Nicholas of Meaux, and two Augustinian nuns, among whom she resided for several years after her separation. Furthermore, it is established by the uniform testimony of witnesses that Aloysia was greatly loved by her par-

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ents, and especially by her father, who, although stern, was able to win over his daughter's heart more than her mother, a woman of a querulous and more delicate disposition, through his great benevolence and authority. Indeed, Aloysia loved her parents so much that, although compelled by them to marry a man she disliked, and although she sometimes complained to them, saying that they were the cause of her great suffering, she nevertheless often concealed her sorrows, lest she should distress them, as her mother says; and she attended to them with filial concern when they were afflicted by a serious illness, completely forgetting the old injustice. And finally, the advocate observes that Aloysia was so devoted to her parents that she remained entirely subject to them; which her mother openly confesses. Nor do some witnesses testify that she was of a lively and somewhat timid nature. These same witnesses also state that she was nevertheless compelled to obey. For, although lively and not timid, she resisted, wept, and tried in various ways to avoid marrying the man she disliked, but she was unable to sway her parents' minds. For, according to the advocate, they absolutely desired this marriage; which he endeavors to demonstrate in the second part of his argument. This is indeed testified to by Judge Ayrault, the widow Ouzille, and the mother-in-law Besné, but even more clearly by Elijah Lahalle. Indeed, the Laurent family was wealthy, but not illustrious; conversely, the Prêtot family, although not enriched by a large fortune, was nevertheless held in high esteem, and the head of the Prêtot family held an honorable position. Furthermore, Aloysius Ernest, who served as the Imperial Procurator in Brest, held an honorable and promising position; and his father's efforts could lead him to higher levels of dignity and fortune, as observed by the nun Lahalle. Therefore, this marriage was advantageous to Aloysia's parents, who, although wealthy, sought the advantages of honor. But it was also advantageous to the Prêtot family, which had before its eyes...

[*Latin ed. p. 89*]

VENETEN. 89, concerning Aloysia's inheritance; and therefore, she did not consider the girl's feelings: but she coveted her inheritance, just as do the widow of Ouzille and Judge Ayrault. In the third section of the testimony, the witness demonstrates that Aloysia, from the very beginning, had no affection for Ernest; and this is not without reason, for Aloysia herself says: "When I was young, I did not love Monsieur Prêtot, because I did not want to be a magistrate." But perhaps another motive also contributed; for the nun of Lahalle asserts that Aloysia learned that Monsieur Prêtot had maintained a friendship with another woman before his marriage, from whom he had a son. Nevertheless, the parents, fearing the consequences, and through coercion, strove to bring their daughter to these nuptials. And first, the actress herself states: "My father, a man of firm resolve, told me that he absolutely wanted this marriage; and that if I refused, he would

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drive me out of his house, so that I would either enter a monastery, or go wherever I pleased." He also said to her: "You will lose your social standing, if Monsieur Prêtot leaves you, and great disgrace will threaten our family; so that no one will ever marry you." She frequently suffered coercion, not physical, but moral, from her father and mother; who for four months tried to persuade her to accept this marriage. The mother, Antonia, confesses that coercion was used by both spouses, namely by the father and mother, and that it continued until the marriage. "I," says the mother, "every day spoke of the certain scandal that would arise, if the daughter rejected such a marriage; sometimes she was silent, sometimes she firmly refused." As for threats, the mother continues: "I remember threatening my daughter twice, or three times, with severe consequences, namely, that she would be confined to a monastery, in order to prevent her from opposing the aforementioned marriage." But the daughter opposed, saying: "I cannot love Monsieur Prêtot." All of this is confirmed by other witnesses. To this, the lawyer adds Judge Ayrault, who, although a witness based on hearsay and reputation, nevertheless holds great authority, because of his intimate acquaintance with Aloysia's parents.

[*Latin ed. p. 90*]

90. VENETEN. testified. He therefore states: It was indeed known to all that the girl was forced into this marriage; and her mother was such that she would entirely carry out her plan to overcome her daughter's opposition. Indeed, moral violence was present, since the girl harbored a great aversion towards the man. Finally, he cites the testimony of the nun Lahalle, who, as a friend of the actress, and in every respect, is to be considered worthy of the greatest trust. She therefore states that she is certain that Aloysia was truly and actually forced into this marriage. Having related these facts, he recalls in the fourth section, at the beginning of the prayer, what follows in law, and he precedes it with the statement that, for a just contract to be entered into, consent must be given freely. Hence, not only he who, under force or absolute coercion, but also he who, under fear, that is, under conditional coercion, makes a promise, does not enter into a just contract; for he is "more likely to be compelled to act than to act willingly." Chapter Sacris, De iis quae vi, etc. And a contract entered into under fear is not valid. "Whatever is done under fear, I will not consider valid," said the Roman Praetor, L. 1 ff. De iis quae vi, etc. And although some Doctors dispute whether a promise made under fear is invalid per se and from the beginning, or only by the judgment of a judge, and many affirm this, while others deny it; nevertheless, in the case of marriage, consent given under fear is absolutely invalid from the beginning. And rightly so, because since marriage, once valid, cannot be dissolved again, in order to protect the individual's freedom and to avert the grave injustice that would result, there was no other remedy than this: that the marital consent, given under

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fear, should be declared null from the beginning, and that the person acting under fear should be considered incapable of giving marital consent. The only question is whether such marital consent is invalid by natural and divine law, or rather by ecclesiastical law. The latter view is held by Sánchez, book 4, De matr., disp. 4, and by many others after him, up to Vecchiotti, Praelectiones, vol. 3, page 176. But the former view is defended by theologians.

[*Latin ed. p. 91*]

VENETEN. 94. Scotus, in 4, distinct. 29, quaest. 1, De secundo; D. Bonaventura, in 4, distinct. 29, quaest. 1, n. 5; et praesertim D. Thomas, eodem loco, quaest. 1, art. 3; et inter canonistas, Reiffenstuel, *De iis quae vi etc.*, num. 47 et sequentes, cum aliis, non paucis. Sed nihil refert in praxi utrum humanum an potius divinum ius sit irritus huiusmodi consensus; dummodo admittatur sponsalitatem fidem coactione, et metus causa datam, nullam, inanem ac irritam per se et ab initio existere. Quo posito, nihil etiam refert inquirere an persona, metum passam, ore loquutam sit, corde tamen non consenserit. Imo, supponitur consessisse, et in hac hypothesi, ad irreparabilem ab ea iacturam avertendam, et in iustissimae libertatis tutelam provida lex constituit, ut huiusmodi consensus sub metu omissus nullus et inanis ab initio habeatur, ac sit. Imo, observat patronus, cum per matrimonium non res aliqua, sed ipsum corpus, et individui libertas alteri tradatur, hinc maior libertas in matrimonio contrahendo requiritur, quam in ceteris contractibus. Ita uno ore D.I., quos inter Sánchez, *lib. 4, disp. O*, num. 2, Consci, *lib. 1, cap. 8*, num. 38; iuncto iure in cap. *Cum locum, De spons.* Attamen ad matrimonialem consensum irritandum requiritur, ut metus sit gravis, ab externo, iniuste et directe ad consensum extorquendum incussus. Porro in themate, metum fuisse ab externo, iniuste et directe ad consensum extorquendum illatum, id extra controversiam esse, ex ipsa facti specie facile evincitur, ait orator. Gravem autem fuisse non difficulter probatur. Sane inter diversa criteria a iurisperitis tradita ad metum gravem dignoscendum, Reiffenstuel, cit., tit., num. 18, cum Scoto aliisque tradit, « ad metum gravem duas has conditiones requiri, ad quas ceterae omnes reducuntur. Prima est quod malum quod timetur sit grave in se, et non solum in vana aestimatione metuentis. Secunda conditio... quod eiusmodi grave malum certo immineat, ut non levi aestimatione, sed certitudine morali, seu sufficienti in actibus humanis, iudicetur eventurum. »

[*Latin ed. p. 92*]

92 VENETEN. The threat of expulsion from the paternal home, and of confinement in a monastery, constituted a grave evil for the young woman, especially since she was twenty-nine years of age. Moreover, given that the matter concerned parents of stubborn character, with imperious natures,

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who hoped for great profit for themselves and their family from this marriage, and who were easily angered if contradicted, and who were determined to carry out their plans, the threatened expulsion or confinement certainly involved a moral certainty of harm. It cannot be admitted that the danger of these threatened evils was considered to be insignificant or trivial. Indeed, Judge Ayrault, who testifies to having known Aloysia's parents intimately, states that her mother's character was such that she would certainly carry out any threats she made. And it is all the less possible to consider the expulsion from the paternal home, and the confinement in a monastery, together with other circumstances, as a minor matter; for the loss of home and freedom is absolutely the greatest evil, and not only does right reason proclaim this, but the laws themselves declare it universally. *L. Ego puto ff.* Concerning these matters, see *De his quae ri etc.*, joined with the decree of the Rota, December 374, *cor.* Ludozisio. This must be further verified in the assessment of a lively young woman; for "the quality of persons must also be considered; for a lesser degree of fear suffices in a woman than in a man." Reiffenstuel, *tit.* cited, no. 79, Sánchez De matr., book 4, section 3, no. 2, Vecchiotti, *tit.* 3, no. 176, and throughout. To this authority is added the greatest strength by the instruction of the Sacred Congregation of Propaganda, which teaches that "the gravity of fear arises from the nature of the threats, from the quality of both those who make them, and of those who suffer them"; and then it enumerates the individual circumstances that are required for the assessment of grave fear, namely, the authority and persistence of those who threaten, the fragility and inexperience of the one who suffers, prolonged and persistent harassment, and finally, the gravity of the threats themselves. Since all these circumstances are most clearly verified in this case, there is no doubt that Aloysia experienced a grave fear, the advocate concludes. But, in addition to the simply grave fear, it is also maintained that there was a grave reverential fear, by which the marriage...

[*Latin ed. p. 93*]

VENETEN. 93. Likewise, these are considered invalid. According to the more common opinion of the Doctors, the term "reverential fear" refers to the reverence due to parents and superiors; however, they say that, if it is the only factor present, it is not sufficient to invalidate a marriage. But if this is accompanied by serious threats or acts of cruelty on the part of the parents, or at least by persistent and importunate requests, then a true reverential fear is present, and all agree that it is sufficient to invalidate the marriage. Thus, Sánchez, *lib. 4 De matr.*, disp. 6 and 17, Reiffenstuel, *cit.*, tit. num. 95, and many others cited there. However, the opinion of Emi D'Annibale is considered more accurate and truer, who, in vol., page 104, note 14, states that reverence towards parents, by itself, is improperly called "reverential fear," "because fear without any danger of harm is not under-

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stood." Furthermore, when serious threats or acts of cruelty are present on the part of the parents, it is not simply "reverential fear" that is present, but rather a serious fear. Therefore, reverential fear is properly present when one fears the anger of a superior, even if there are no beatings or threats. For the anger of a parent or superior "is an evil, and if it is serious and prolonged, it is a grave evil, and therefore a grave fear is not undeservedly considered." Furthermore, all the Doctors agree that persistent requests, and the importunate insistence of parents, combined with fear and obedience to them, constitute a serious fear that invalidates a marriage. Indeed, so expressly states Reiffenstuel, tit. *De regulant, etc.*, n. 265; Pirhing, *L 4, t. 1*, n. 119; Engel, tit. *De spons. et matr.*, p. 5, num. 4; Pignatelli, *t. 9*, cons. 130, n. 19; *Clericatus, Dec. 17, De matr.*, n. 24; Vecchiotti, Santi, and others, omitting the rest; even the severe Antoine, in his treatise on marriage, *c. 1, n. 7*, in response to the question he poses, whether importunate and repeatedly made requests create sufficient fear to invalidate a marriage, answers: "Affirmatively... if these two factors concur, namely, the authority of the person making the request, and the importunity of the requests." This opinion of the Doctors not only rests on reason and equity, but also on a clear disposition of the law. For there is a legal maxim:

[*Latin ed. p. 94*]

94. VEN. L. Velle ff. De reg. iur. « Quod velle non creditur qui obsequitur imperio patris vel domini. » Unde in 1 ff. Quarum rerum actio, p. Quae onerandae, irrita declaratur promissio libertatis domino facta, « si liquido appareat, libertum metu solo, vel nimia patroni reverentia ita se subiecisse. » Iamvero in themate, prosequitur orator, parentes per quatuor menses puellam hortati sunt, adprecati sunt, eandem terruerunt dura agendi ratione, atque impulerunt ignominiae larva, et imperio. Quibus si iungantur minae, auctoritas, et ingenium parentum, iragilitas et inexperientia Aloysiae, facile iuxta patronum intelligitur, libertatem, ad tantum consensum requisitam, omnino peremptam fuisse. Quod magis confirmat in postremo orationis capite, ubi iuxta instructionem S. O. de Propaganda ad examen revocat quae matrimonium praecesserunt, convitata et subsequuta sunt. Si enim mulier tum ante, tum in actu matrimonii tum postea magna reluctantiae signa dederit, restiterit, fleverit, aliave quae potuit tentaverit, ut invisum iugum a se averteret; exinde invicte argui, vim et metum incussum ac defectum consensus, expresse tradit tum citata instructio, tum S. Rota, in Decis. 115 p. 12 recent, num. 7. Cohaerenter ad haec singulas orator facti circumstantias recensens, recolit, dum habebantur matrimoniales tractatus, Aloysiam nedum restitisse, reclamasse, sed et saepius flevisse. Aloysiam flevisse ob illatas vexationes etiam vidua Besné confirmat. Imo quo proximior fiebat matrimonii dies eo magis moeruisse ipsa docet mater. Aloysia deprecata semel est avunculum, ut sibi penes patrem auxilium praeberet, ceu refert matertera Besné.

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Observat insuper orator, Aloysiam omni nisu tentasse Ernesti animum a se alienare, nunc frigide eum excipiendo, nunc flores, ab eodem exhibitos, ad ecclesiam extemplo et cum incuriae ostentatione mittendo, nunc ei significando se equitationi, res eidem prorsus odiosa, indulgere velle. At, minoribus omissis, factum recolit, quod quinta cir-

[*Latin ed. p. 95*]

VENETE*. 95, before the wedding, a week transpired. At a solemn celebration held in the maritime prefecture of Lorient, during which dances were being performed, Aloysia repeatedly and consistently avoided Ernest. Consequently, Ernest became angry, and the following day he wrote to Aloysia's parents, stating that he intended to send a notice of his intention to marry; however, Aloysia's mother dissuaded him from this intention, as she herself confesses. In a similar circumstance, when Aloysia was fleeing from her sponsor, and the dances were proceeding towards the official of l'Escaille, when this official inquired about the reason for this behavior, she confessed her aversion towards her fiancé; and in the fervor of Iude, she urged him to seize her and to save her from the unwanted husband, which he did not do. Besides the actress, this is recounted by Judge Ayrault and Elias Lahalle. Unable to seize her, she attempted to flee, and indeed requested that she be received by a friend of the Lahalle family. And although the actress initially stated that she had made this request to Berta Lahalle, her companion, now deceased, and this was denied in the course of the proceedings; nevertheless, according to the advocate, the matter is still worthy of belief; for in letters, which are without a date but which are nevertheless earlier in the discussion of Berta, Aloysia corrects herself, and affirms that she requested this not from Berta, but from her mother. Furthermore, both Elias Lahalle and Judge Ayrault affirm that they knew these circumstances and had heard them recounted. When all of this seemed to be in vain, Aloysia proposed to write to Ernest, so that he would desist; but in vain, for Aloysia's parents intercepted her letters. This, besides the actress, is testified to by Elias Lahalle, and also by the widow of Culmore. Furthermore, when the appointed day was approaching, and Ernest's parents had come to visit Aloysia, in order to show them her aversion, she left by another route; which she herself recounts. But when they approached to offer their congratulations, she, although in good health, remained in bed all day, so that she would not see them, and would not cause them offense; and she did not yield to her parents' pleas until evening.

[*Latin ed. p. 96*]

96. The maiden, weary of the demands made upon her, rose up. This the mother confesses, and this the judge Ayrault confirms. Recounting then what occurred the day before and on the very day of the wedding, the advocate recalls that the nun Lahalle testified that Aloysia, the day before the

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marriage, had asked her father to release her from this obligation, and that the father had replied that it was too late; so that if she were to refuse the proposed marriage, she would appear ridiculous in her homeland, which she would be forced to abandon. And on the morning of the wedding day, according to the testimony of the young woman Besnë, the girl wept bitterly before entering the church, and embracing and kissing her, she said that she was unhappy. As for the celebration of the marriage, the actress stated that she had intended to refuse, but at the last moment, she lost her courage, fearing that a scandal would arise. And in the church, she added, she shed tears throughout the entire Mass, and everyone who looked at her saw that she was desolate. This is confirmed by the mother and other witnesses. Therefore, the advocate argues that, considering these circumstances, there was no true marriage. Furthermore, according to the common opinion expressed in Reiffenstuel, *tit. De his* ([ime vi etc. n. 88: "It is also presumed that there was fear when the one who contracted the marriage, or who consented to it, wept during the celebration of the marriage, unless perhaps another cause intervened to explain the tears...; such indications are of great help in uncovering the truth and in recognizing fear."], but if the tears are considered a significant indication of coercion, then coercion should be admitted with greater certainty if despair, grief, and prayers offered in the name of God are added, so that she might be released from the marriage. And this is even more likely if the events that occurred after the wedding are taken into account. For, as several witnesses testify, Aloysia was always sad after the marriage, and often in tears. Indeed, the mother herself confesses that the same arguments that caused her sadness on the day of the marriage persisted for four or five days after the marriage began, and on an occasion,

[*Latin ed. p. 97*]

VENEÏEN. 97 reprehendebat parentes, affirmans eos fuisse causam illius maximae infelicitatis. Deinde, orator omittit quae ab actrice narrantur, scilicet quod ipsa decem dies mansit antequam viro debitum redderet; nec tandem acquiesivit, nisi quia ex errore putavit omnia sibi absoluta esse; at tamen semper discordem fuisse a viro, ita ut cito post nuptias tentaverit ad suos parentes redire, nisi ab iisdem prohibita fuisset. Itaque, concludit orator, aequitatis canonicae ignara, a parentibus repulsa, suas nuptias validas putans, coactum, invisum ac in dies gravius contubernium quattuordecim annos subiit; quin tamen exinde quidquam pro matrimonii valore concludi possit. Nam S. O. C. in Panormitano, in *Nullitatis matrimonii* 30 Septembris 1719, hanc peremptoriam declarationem edidit: « C. Cardinalium Concilii Tridentini interpretum saepius respondit, hodie post Concilium Tridentinum, matrimonium metu contractum, etiam purgato metu per cohabitationem cum carnali copula aliosque actus, non convalidari, nisi iterum contrahatur, adhibita iterum eiusdem Concilii forma. » Idcirco, in

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themate num matrimonium metu, juxta dicta, contractum fuerit, et tamen nedum nova legitimaque eius celebratio, sed nec spontanea cohabitatio cum scientia nullitatis prioris coniugii, metusque purgatione intercesserit; iam contubernium 14 annorum nihil prorsus valere, nihilque esse patronus contendit. Eo vel magis, quod diuturnum hoc contubernium, ad id tantum desierit, ut infelix mulier, tam diuturna animi angustia tentata, nullaque *remedii* spe erecta, in morbum inciderit et quasi mente corripi visa sit. Unde tandem concludens patronus duo adhuc notata vult, nempe 1. ad causam metus valde prodesse ipsam dolorosam confessionem parentum, elicitam antequam morerentur coram amicis, qui de hac testes fide digni sunt. Nec 2. nocere parvas quasdam in rebus minoris momenti discrepantias. Nam si ab actrice et eius matre nonnulla, non omnino praecise referuntur, meminisse oportet hanc levioris indolis feminam 75 aetatis annum iam excessisse, et Acta, Tom. XXII. fase. CCLIV. 7.

[*Latin ed. p. 98*]

98 VENETEX. Therefore, [the actress] suffers from a double weakness of mind; and the actress herself was, in truth, overwhelmed by grief, her mind seemingly clouded for several years; and finally, we are dealing with events that occurred approximately 25 years ago; hence, these minor discrepancies serve only to demonstrate one thing: that there was indeed a collision between the witnesses and the party involved.

OBSERVATIONS OF THE DEFENDER OF THE BOND.

On the other hand, the defender of the bond first notes that, undoubtedly, the most reliable witness for the actress is Lucian Ayrault, who is pursuing a case in the civil court of Paris; and that this request was made solely for the convenience of this witness, that the proceedings of the present case be concluded in Paris, which is, of course, an improper venue. It is known that a man from Bordeaux, acting as counsel for that party, is involved. Furthermore, according to the Instruction of the Sacred Congregation of Propaganda, it is established that "spouses must assist the Bishop in the diocese in which the husband has his domicile in matrimonial causes." And if, as in this case, the conjugal union has been broken by separation from bed and board, then, as Manseila De Imperii, Matrimoniali, Part I, Chapter 6, Article 1 states, "the competent judge is the Bishop in whose diocese the domicile of the party against whom the action is brought is located." Therefore, since in this case the party against whom the action was brought was the husband, it would follow that he should have been summoned by the court of Bordeaux. Or, if not, then by the Ordinary of Vannes, in whose diocese the marriage was celebrated. Although, "with regard to the matter at hand, the contract and the offense," a judge can legitimately be acquired, albeit less properly and only in a broad sense. But, on the contrary, it was

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requested that the Parisian court be delegated, because "many of the witnesses reside and have their domicile here in Paris." The defender of the bond declares that this is not accurate, for among the witnesses examined, only one, Ayrault, resides in Paris.

2. It is stated that the mother of the actress completely refused to go to the court of Vannes; but that the husband was summoned by the Parisian Ordinary and may have attended; "but it is certainly more certain that he will not attend the court of Vannes." And yet, it is proven that Ernest Prêtât was requested by the Vicar General of Bordeaux to come to the court, and, unless...

[*Latin ed. p. 99*]

VENETEX. Ninety-nine formal objections had been presented, with the intention of preventing the deposition of the aforementioned individual. Having stated these matters concerning the delegation, the defense proceeds to address the issue of fear, recalling that the actress did not suffer physical violence, but rather a moral one; and not only did she say this, but she has also confessed for a long time to her closest friend, today present, Berthae Lahalle. And those things mentioned concerning prayers to the Father, weeping, and other matters, the lawyer notes, are not narrated by the nun herself, but are based on what she heard from the actress; and therefore, they should not be given too much weight. Furthermore, all that is contained in the civil divorce proceedings confirms the lack of fear in the actress. Immediately after the marriage, she showed a desire to remain in the marital home for a shorter period than possible; and in fact, she stayed at her father's house throughout the summer and beyond. Indeed, on October 14, 1868, she wrote insulting letters to her husband, in which she declared to him: "I feel the greatest repugnance to returning to your companionship." And she repeated this on other occasions, especially in letters dated June 1, 1879. While living with her husband, she reproached him with many words and actions; and it is true that once, in the presence of several people, she said to him, "You treat me like a common person." And on other occasions, she insulted him in this way: "You can die, you will not be punished." And finally, once, overcome with rage, she did not hesitate to take a vase to throw it at her husband, if she had not been stopped. All of these things, presented by the husband in the divorce proceedings, and admitted by Aloysia, demonstrate, according to the defender of the marriage bond, that the actress was not of a gentle spirit and a timid mind, and that it is falsely claimed by Ayrault that Aloysia could not have had any will, because her parents were of a harsh spirit and stubborn character. Nor does it matter that Judge Ayrault admits that he was a close friend of the Laurent family; since he himself testifies that this friendship began only four or five years after the marriage; and furthermore, he himself, being suspected of being too well-disposed towards the actress, can renounce his

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testimony.

[*Latin ed. p. 100*]

100 VENETEN. And other witnesses could also be considered, and first among them is Mary Ouzille, because of contradictions in her testimony; a contradiction which could only have arisen from the habit of an actress. And also to be included in this assessment are Elijah Lahalle and Emma Besné, Aloysia's mother-in-law; because, while they spoke of a great aversion Aloysia had towards her husband, and of threats made to the actress to bring about this marriage, Sister Bertha Lahalle, the actress's closest friend, testifies: "I do not know if the parents treated Aloysia harshly before the witnesses; nor if they threatened her, or intimidated her to enter into this marriage." Indeed, what Elijah Lahalle recounts about the parents' absolute will that Aloysia marry only Ernest Prêtot, and no one else, Aloysia herself demonstrates and confirms to be false. For she says: "I had many opportunities for marriage, but this one was very desirable to my family." And this is entirely confirmed by the testimony of Sister Lahalle concerning Aloysia. But, the defender of the marriage continues, "there is another contradiction, which the woman's own advocate admits, namely, concerning the refuge taken in the house of Lahalle, which Aloysia says she requested, while this very person declares that she is completely unaware of it. Nor does the actress mention having corrected herself after her testimony; nor, according to the defender of the marriage, can it be seriously said that this correction occurred before the questioning of Sister Bertha Lahalle. If, indeed, the letter in which Aloysia amends her account is undated and unsigned. Therefore, since Aloysia has been found to be untruthful in this particular circumstance, she cannot be considered faithful and truthful regarding other matters she recounts to the same effect, and especially concerning those events that occurred a few weeks before the marriage, in the houses of the maritime Prefecture of Lorient, during the dances. For the actress states that she constantly avoided Ernest's embraces at that time, and that she proposed a flight to the official De Y Escaille, who is now deceased, as a fabrication. But, beyond all else, it is implausible that...

[*Latin ed. p. 101*]

VENETEN. 101. This passion did not burn with ardor, as the very actress herself stated, having suffered such a grievous injustice, and having been inclined to lead Aloysia astray. Furthermore, a witness is brought forward regarding this matter, that is, no witness. Therefore, this circumstance, even though magnified, since it is not supported by any argument and is unbelievable in itself, must be rejected and not taken into consideration.

Just as it must be corrected and rejected from the very beginning of the judgment, what Elias Lahalle and the judge Ayrault recount, namely, that Aloysia had written to Ernesto Prêtot one day, urging her to withdraw and

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to desist from the marriage with him; which they say she learned from Aloysia's father himself, who also added that Aloysia's father had intercepted the letters. Indeed, Aloysia's father, whose authority is invoked, is deceased, as is the woman Dubotiez, to whom the parties and witnesses also frequently refer. Certainly, this invocation of the deceased is not without suspicion.

After these matters, concerning the weeping and Aloysia's tears during the marriage ceremony, the defender of the bond notes that Mariam Ouzille said: "I was only present at the Mass"; and yet, previously, she had recounted that on the morning of the wedding day, Aloysia had torn up all her ornaments and wept, as she herself reported to me. These statements do not seem to agree with each other; for it is asserted that a witness was present at one of the wedding rites, and therefore her presence in the bride's house, early in the morning, during the time of adornment, is excluded.

Furthermore, the defender adds: this apparent violence and Aloysia's forced acquiescence contradict Aloysia's character, as testified by the nun Lahalle, who stated that she was not timid, but rather acted according to her own nature in her home; and as Aloysia herself stated, that her parents' great kindness had raised her to a completely different way of life.

Moreover, the defender notes, citing Barbosa, vol. 77, no. 47, that "in order for fear to fall upon a steadfast man, and therefore to be sufficient to invalidate a marriage, five conditions are required. The first is that the evil that is feared must be..."

[*Latin ed. p. 102*]

102 VENETEN. [This is] a great evil. Secondly, that the one fearing should not believe that evil to be threatening him lightly and vainly, but rather probably and reasonably. Thirdly, that the one experiencing fear should be able to command the execution of threats. Fourthly, that the one experiencing fear should be accustomed to execute threats. Fifthly, and lastly, that the one fearing should not be able to easily encounter the evils that are feared, namely, by imploring the help of someone, or by consulting a superior. "Furthermore, there is the long-standing companionship of a woman with her husband, which cannot be attributed to necessity or to the precise will of the parents; for it is known that Aloysia used to visit her parents every year, and for a long time was accustomed to stay with them; and finally, the father arranged everything to prepare for a friendly separation between the betrothed. Nor should credence be given to the actress's piety, since her actions, stemming from a civil agreement with the official Geoffroy, demonstrate how much she disregards divine and ecclesiastical law. Nor does it seem that the testimonies of the witnesses should be considered, since they are few in number, and one among them, namely the nun Bertha Lahalle, to whom one should most trust, confesses

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that she knows nothing in many matters; and this is also corroborated by the current parish priest of the place, and moreover, since all are favorable, and no unfavorable testimony is introduced, and of those presented, one, namely Madame J a mes de Bellerroy, was dismissed and completely omitted, although she had indeed been mentioned by the actress. With these observations, the purpose was to resolve the doubt as to whether the judgment of the archiepiscopal court should be confirmed or overturned in this case. RESOLUTION. After considering the matter, the Sacred Congregation decided on May 4, 1889, to respond: The judgment should be confirmed. FROM WHAT HAS BEEN GATHERED: I. That an action performed under fear cannot be considered valid; for he who, under duress or under fear, promises something, is more likely to suffer than to act.

[*Latin ed. p. 103*]

VENETEN. 103. Therefore, the equity of the Church dictates that force or fear, when present in entering into marriage, renders no valid consent given in the marriage contract; because the marriage could not be more validly dissolved, and the individual's liberty would be violated, and the one who has suffered injustice would have no remedy. III. Hence, it is truly said to be a law that does not consider whether the one who has suffered force has consented with his mouth or heart, but rather declares that no such consent was given from the beginning, in order to protect human liberty. IV. However, not all fear invalidates the consent of the contracting parties; but only when the feared evil is grave in itself and certainly imminent, not by a slight estimation, but by moral certainty. V. In this matter, a grave evil in itself is constituted by the threat of banishment from the paternal home, and the confinement to a monastery of a girl of twenty-nine years of age, made by parents of obstinate character and imperious spirit. VI. Reverential fear, joined with threats, cruelties, or importunate prayers of parents, renders no consent valid in marriage; because it is not believed that one wills what he does in obedience to the command of a father or master. VII. The gravity of fear arises from the nature of the threats, from the quality both of those from whom they originate, and of those who are said to suffer them.

[*Latin ed. p. 104*]

104 FROM THE DECREES OF THE BISHOPS AND OF THE REGULAR CANONS OF ASCULUM-PICENUM, THAT IS, OF FIRMO. On the 15th of March, 1889. SUMMARY OF AGREEMENTS. By a decree of the 13th of January, 1776, the Most Reverend Leonard, Bishop of Asculum, erected a Confraternity under the title of the Blessed Virgin Mary, assumed into Heaven, in that city; and, at the request of the Brothers, he changed it into a sodality of the Most Sacred Heart of Jesus, by another decree of the 17th

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of August of the same year, according to the rules and statutes of the Archconfraternity of the City of Rome, so that the Officials and Brothers might be able to obtain the indulgences granted by the Supreme Pontiffs. In the aforementioned decree of the 13th of January, the Bishop decreed that the Officials, chosen by the Brothers, should be confirmed by the Bishop of the time – the Officials to be chosen by Us and Our successors, and to be confirmed. Furthermore, on the 17th of August, he wished that the episcopal and parochial rights should remain firm, which had been reserved in the preceding decree: "Moreover, let all the episcopal and parochial rights, and all other rights contained and expressed and reserved in Our preceding decrees, remain firm; concerning the rest, let them follow the statutes, ordinances, and constitutions printed in type for the venerable Archconfraternity of the City, which have been issued and confirmed, etc." In more recent times, in the year 1879, a certain Eleucadius Natali, who had held the office of jailer in previous years, twice petitioned to be counted among the brothers of that sodality; but his requests were twice rejected. However, after his requests were repeated a third time, and by a majority of votes, he was finally admitted, both in the secret and general councils. And although the Brothers who opposed Eleucadius maintained, as much as they could, that his election was irregular, it was not so.

[*Latin ed. p. 105*]

In the March of Asculum, or Fermo, nevertheless, in the following year, Eleucadius was admitted among the supernumerary brethren. Under these circumstances, a certain Canon Ambrosi, without the prior's consent, appealed to the Archicongregation of Rome, and, enumerating the irregularities which, according to his opinion, had occurred in the election of Eleucadius, he requested the Archicongregation to express its opinion regarding said election. Upon receiving the petition, the Roman Archicongregation gave a favorable vote to Eleucadius through its Prior, who in turn urged the Bishop of Asculum to punish Canon Ambrosi and his brethren with the penalties prescribed against those who disobey the Constitutions of the sodality, whenever they refused to comply. Furthermore, the Episcopal Curia attempted to resolve the matter; but with fruitless and wasted effort; since the Brother Formica, who was Prior at that time, not only did not comply with the Curia's prescriptions, but went so far as to openly deny that the Bishop had absolute authority over the sodality, and, relying on the votes of four brethren, he did not hesitate to remove Eleucadius from the list of brethren. When this reached the ears of Eleucadius, he immediately appealed to the Ordinary, who advised his advocate to present a petition to the Sacred Congregation of Bishops and Regulars against the conduct of the Prior. Eleucadius' petition, for information and in its entirety, was sent to the Bishop, who, enumerating several irregularities and arbitrary actions, not only against Eleucadius, but also against other brethren and

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officials, implored a decree from the Holy Sacred Congregation, whereby the actions of Prior Formica would be declared null and void, and that the brethren and officials would be restored to their offices; that Formica and Canon Ambrosi would be expelled from the list of brethren, or, if that were not possible, that they would be declared incapable of holding any official position; that the Bishop's authority over the sodality would be affirmed; and finally, that the election of new officials would be postponed, and that the administration of the sodality would be entrusted to a temporary administrator.

[*Latin ed. p. 106*]

106. OF THE PICENE OR FIRMANE [FERMO] CONFRATERNITY. Having considered all matters, the Most Holy Congregation decided, due to the urgency of the situation, not to intervene in this affair; hence, the election of the Prior and Officials was postponed. However, this procedure appears to have been marred by irregularities. Regarding this matter, on June 17, 1883, the Bishop referred the entire case back to the Most Holy Congregation, earnestly imploring them to resolve the matter as soon as possible. Having received the Bishop's renewed request, the Most Holy Office responded on June 30 of the same year, stating that it would be more appropriate for the Bishop himself to resolve the matter, in accordance with the Constitution of Clement VIII, which begins "Quaecumque," and also taking into account the decrees issued by Bishop Leonardi in 1776 regarding the establishment of the Confraternity. This response did not please the Bishop, who therefore considered it better to refrain from taking action for a time. However, the affairs of the confraternity were deteriorating daily; therefore, the Bishop instructed his Vicario Generale [General Vicar] to immediately implement the decree of the Most Holy Congregation of June 30, 1883. The General Vicar, after fulfilling the necessary preliminary requirements, in a general meeting on June 29, 1884, before proceeding with the election of the new Prior and Officials, issued a decree by which Eleucadius was again included among the confraters; the confraters Ambrose and the Pleban were suspended from active and passive voting for three years; and the confrater Formica was removed from the list of members. Furthermore, he ordered that the elections be postponed until it was known who were the confraters to whom the right to vote belonged. Immediately, an appeal was made against this decree, and a petition was presented requesting that the case be brought before the Most Holy Congregation, since the episcopal court was not considered capable of rendering judgment on a matter in which so much was at stake. With this in mind, on July 13, 1884, the Archbishop of Fermo was ordered to resolve the case himself, as the judge of the first instance. This mandate

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was renewed on April 14, 1885, to the same.

[*Latin ed. p. 107*]

IN THE MARCHES AND PICENUM, OR FIRMO, 107, it was ordered that, without delay, proceedings be instituted against him and that they be carried through to the pronouncement of sentence. The Archdiocesan Tribunal of Firmo, after hearing the arguments of the four members who were involved in the case, and after dismissing with scant consideration certain protests presented by them against the manner in which the same Tribunal was acting, on September 21, 1886, pronounced a final sentence, which was almost entirely favorable to the decree of the Tribunal of Ascoli Piceno. After this sentence was notified to those concerned, an appeal was made by one of the four members to the Holy Sacred Congregation, which ordered the Archbishop of Firmo to transmit, together with the procedural records, the final sentence to the same Sacred Congregation, so that the controversy might be submitted to the judgment of the highest Fathers.

A Synopsis of the Arguments: The defender of the four members, in order to impugn the sentence of the Archdiocesan Tribunal of Firmo, presented the following argument on behalf of his clients: "The Venerable Brotherhood of the Most Sacred Heart of Jesus of Ascoli Piceno, like other Brotherhoods of the same city, possesses the faculty of exercising rights and carrying out works established by its own Constitutions, but always subject to ecclesiastical authority." He argues that this principle is far too broad and extensive, and contrary to truth. To prove this, he states that § 5 of the Constitution of Clement VIII, which begins with the words "Quaecumque," indeed prescribes that the statutes of the Brotherhoods are subject to the right of the Bishop to approve, modify, or correct them; but it must be understood in such a way that, once this has been done by the Bishop, it is within the power of the members, within the limits prescribed to them, to act independently of the Bishop. With this premise, the defender maintains that the members of any brotherhood are to be considered immune from ecclesiastical authority whenever their resolutions concern the internal affairs of the brotherhood, and only indirectly in connection with works of piety.

WHAT FAVORS THE FOUR MEMBERS.

[*Latin ed. p. 108*]

108 In FIRMANA, which is also called PICENUM, the matters concerning the observance of regulations are to be addressed. Therefore, it is to be granted to the Brothers full freedom and independence from the authority of the Bishop concerning the selection of those who are to be admitted, provided that this contributes to the achievement of the goals, pertains to the internal affairs of the Brotherhood, and is indifferent to religion, or is

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harmless. On the other hand, whenever the decisions of the Brotherhood directly concern works of piety and religion, it is the duty of the Bishop to ensure that such works are completed for the good of religion, and not to its detriment. This is the doctrine which the Holy Office has repeatedly taught, especially on August 2, 1581, in a decree of Saint Angelus, where the following words are found: "The Bishop may visit the Brotherhoods with the use of inquiry, not only in their own oratories, but also in the churches of the Regulars, in matters concerning the administration and the fulfillment of obligations, or which have reference to the Brothers." To this, the decree of Derthonen of March 22, 1604, adds its agreement. In Castellanet, on November 19, 1603, it is prescribed that the Bishop may not interfere in the administration of the goods of the Brotherhood, as long as they are not squandered. However, it is established in Ragusa on April 1, 1596, and elsewhere, that the Ordinary may attend the meetings of the Brothers; but this power is limited by these words, namely, provided that he does not introduce innovations. Indeed, in Veliterna on June 13, 1879, it is added that he may not even be allowed to vote. From the foregoing, the author draws the alleged paragraph of the Archdiocesan decree and the following, namely, that the Bishop has jurisdiction not only in matters of religion or pious works, but also in those which concern administration or discipline, since these are too extensive and lack any restriction, and therefore do not correspond to the distinction previously explained, and are therefore to be rejected. Hence, he argues that the decree of the Bishop of Ascoli of July 3, 1882, which presumed to remedy supposed or real irregularities, is illegitimate, concerning the legitimate admission.

[*Latin ed. p. 109*]

ASCULANA PICENI, OR FIRMANA, 109. The Natali brothers opposed the decision; since the Bishop had intervened in matters which depend on the free authority of the Brothers. After this, the patron undertakes to defend the actions of the Prior Formica, maintaining that the penalty of suspension imposed on the Officials Cantalamessa, Saladini, and Ferrari was just and valid, having been inflicted by the Prior himself, and therefore lawful. Indeed, he truly believes that the actions of the Prior cannot be called irregular, nor rebellious to the diocesan authority; since the statutes of the Confraternity grant the Prior the power to punish and suspend the Brothers. Furthermore, he believes that there were excellent reasons for imposing the penalty of suspension on the aforementioned Brothers; especially on the brother Saladini, because he had dared, in the Council of July 28, 1882, to submit a declaration to the Prior, which was most damaging to the rights of the Confraternity. And he cites the saying: "He who presumes to judge outside his territory will not be obeyed." He believes that the Prior was free from any stain of fault, even when he refused to execute the prescriptions of the Bishop, by which he was commanded to

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postpone the elections of the sodality. He affirms that this matter pertains to the exclusive competence of the pious sodality, since it concerns a matter which regards the intimate and proper conduct of the same sodality. Regarding the election of the brother Eleucadii Natali, he believes that it was invalid, because of his qualities and his age. It was indeed invalid primarily because of the man's qualities, since the rules of the sodality, in chapter II, prescribe that only those Brothers should be admitted who are worthy of consideration because of their rank, condition, or way of life. Furthermore, the quality of being a prisoner leaves a certain mark, even in him who exercises this office piously, which will never be erased by the passage of time. Moreover, he argues that the election was invalid because of his age, because...

[*Latin ed. p. 110*]

In the town of Asculana Picena, or Fermo, Eleucadius had already surpassed the age of 55, as prescribed by the statutes, when he was admitted among the Confratres. However, the patron found another reason for nullity, namely that in the election of Eleucadius, those things which the Rule establishes in Chapter III concerning the election of Confratres were not observed. Indeed, the Rule in that chapter requires that, when admitting brothers, the Prior of the sodality should first approach them, so that he may be informed by him of all that he ought to observe; that he should then present a petition, in which the name, surname, and place of origin of the applicant are described, and also the name of the brother who has presented him, if he knows him; that the Master of Novices should inquire about his qualities and prudently report them in secret council. And if the information obtained is favorable, the said petition should be publicly read for three days in the choir, so that the Confratres, if they know of any impediment, may secretly inform the Prior. After all these things have been done, he will be counted among the brothers, if he obtains the majority of votes in both the secret and the general council. Truly, the patron states that these prescriptions were not observed in the election of Eleucadius; since his petition was read in secret. Therefore, he concludes that his election, being carried out unexpectedly and by force, is null, invalid, and devoid of any validity, whether considered in its substance or its form. What has been said about the nullity of the election of Eleucadius, it is urged, must also be asserted concerning the decree of the Episcopal Curia of July 3, 1882; both because it was issued without due process, and because, moreover, by that decree, the statutes of the sodality were corrected. It is primarily proven that the decree was null because it was promulgated without due process, since, according to common law, a judgment concerning the eligibility or ineligibility of brothers in matters of controversy must be presented accord-

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ing to the norms of a true process.

[*Latin ed. p. 111*]

ASCI LANA PICENI, or FIRMANA, see *De Sodalitiis*, question IV, number 6; Francis, *De Cathedra*, chapter 27; Cortial, decisions 143, number 24, and others. He demonstrates the nullity of the action, secondly, from the fact that, through this action, the statutes of the sodality were corrected, which, since they had already been approved by the Holy See, the Bishop could not correct; as Bassi states in his work, chapter IV; Ferraris, in the article "Confraternitas." However, even granting, for the sake of argument, that it is within the power of the Bishop, speculatively speaking, to correct statutes approved by the Holy See, he maintains that he could not have done so in this case, because the Bishop seized the opportunity to correct the statutes due to a particular circumstance, which is the prerogative of the Supreme Pontiff alone. Furthermore, if the aforementioned decree of July 3rd did not have force to confirm the election, much less could it have had such force under the resolutions of the Secret Council of December 27, 1879, and of the General Council of the following day; since such resolutions derogated from the statutes. This is contrary to the rules of the sodality, which, in Chapter XVIII, concerning the Secret Council, prohibits anyone from ordering anything that is contrary to the same rules; and furthermore, it prescribes that modifications must be approved by three Secret Councils and confirmed by one General Council, in order to have effect. Moreover, it is established as a fact that Eleucadius Natali was not legitimately admitted as a member, and the patron believes that the complaint filed with the Episcopal Curia is groundless and unjust, because the name of Natali has been removed from the list of members of the sodality. Finally, the patron argues that the judgment of the Curia of Asculana should not be reconsidered with regard to that part in which the election of the officials, completed on June 10, 1883, is declared invalid; since, according to the opinion of learned Doctors, the approval of such an election by the diocesan authority is not only not necessary, but is positively excluded; see Lucca, decision 31, number 21; Bassi, in the aforementioned place, etc. Having considered these matters, both in fact and in law, the patron requests that the Most Holy Council decide: 1. That the sodality of the Most Sacred Heart of Jesus in the city of Asculana be...

[*Latin ed. p. 112*]

112. The Asculan-Picenian, or Fermo, association is independent of the diocesan authority, both in dealing with its internal and private affairs, as well as in the selection of its members and officials. 2. The association has the right to exercise its rights and carry out the works established by its Constitutions, and the ecclesiastical authority cannot oppose this. 3. The Episcopal Curia does not have the power to prevent the association from

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exercising its rights and fulfilling the duties inherent to the association; and the Curia only has the right, according to the aforementioned Constitutions, to exercise jurisdiction in religious matters, or those pertaining to pious institutions. 4. The actions of Prior Formica have been in accordance with the Constitutions, in all matters relating to the association and its members, as well as relating to the ecclesiastical authority; and the resolutions passed in the councils have been legitimate and regular. 5. The election of Brother Aloysius Odoardi as Prior, and the election of the officials, which took place on June 10, 1883, were both legitimate and valid, as were the resolutions passed at that time, when Odoardi was leading the association. 6. The appeals presented to the Episcopal Curia of Ascula were unjust; and the prohibitive prescriptions and mandates of that Curia, issued against the administrators of the association and to the detriment of the association itself, are to be considered illegitimate. 7. Eleucadio Natali is not fit to be included among the members of the association of the Most Sacred Heart of Jesus. 8. Finally, the burden falls upon the Episcopal Curia of Ascula to pay all damages and expenses.

FOUR CHARGES ARE BROUGHT FORWARD. It has been determined, with the favor of the Episcopal Curia, that the Bishop of Ascula, Leonardi, by erecting the Confraternity of the Most Sacred Heart of Jesus according to the Constitutions, *Fel. Rec. Clementis VIII* which begins "Quaecumque," reserved the right to himself and his successors to approve the statutes, confirm the officials; and furthermore, he wished to retain all rights, both episcopal and parochial. It has also been noted that the Bishop, in his dealings with the confraternity, has...

[*Latin ed. p. 113*]

ASCOLI PICENO, OR FIRMO, 113: By joining the Ascoli confraternity to the Archconfraternity of the City of Rome, and thereby reviving what had been established in the aforementioned decree of erection, it was stipulated that, in all other respects, the confraternity should adhere to the statutes approved for the Venerable Archconfraternity of the City of Rome. Consequently, it follows that everything which the Cardinal Vicar had reserved in the decree of erection for the Archconfraternity of his beloved City, under his ordinary authority, was to be understood as reserved for the Bishop of Ascoli with respect to the confraternity established in Ascoli. Indeed, since it is evident from the fact that the Cardinal Vicar, in his decree of erection, reserved the right to modify, reform, or expand, if necessary, the statutes of the Roman Archconfraternity, and furthermore decreed that the aforementioned Archconfraternity should be subject to his ordinary visitation and jurisdiction, and that of his successors, in perpetuity; it necessarily follows that the same rights should have been reserved to the Bishops of Ascoli for the time being. Therefore, the current Bishop of Ascoli has the right to modify, reform, or expand the statutes of his confraternity, whenever

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necessity and utility demand it, and also to subject the confraternity to his ordinary visitation and jurisdiction. Nor is this doctrine different from that of the Holy Sacred Council, which in several resolutions declared that "The Bishop can visit confraternities with the use of censors, not only in his own parishes, but also in the churches of regular canons, in those which concern the administration and fulfillment of duties, or which have relations with the confratres." Furthermore, in the present case, since a dispute had arisen among the confratres, the Bishop deemed it his duty to resolve the matter, declaring that the election of the brother, who had been duly elected by a plurality of votes in the secret and general council, in accordance with the Constitutions of the confraternity, was valid. Therefore, the decree of July 3, 1882, was nothing other than the Act, Vol. XXII, p. 254.

[*Latin ed. p. 114*]

In ASCULANA PICENI, SEI FIRMANA, under the ordinary jurisdiction, it was the will of the Bishop that the statutes of the Confraternity, which are laid down in Chapter 3, should be maintained in full force, especially concerning the admission of new members, namely, that the man who obtains the majority of votes in both Councils should be admitted as a brother. It is, however, objected that Eleucadio Natali could not be received as a brother, not so much because of the office of jailer which he previously held, as because he has already surpassed the age of 55 years. This difficulty, it seems, can be overcome by considering that the statutes do not pertain to individual brothers, but to ecclesiastical authority and to the Councils, both secret and general, in matters of judgment concerning the meaning that should be given to the statutes. Therefore, since both ecclesiastical authority and both Councils declared that Eleucadio Natali could be elected, it remains for the other brothers to do nothing other than to receive him as a brother, and this in obedience to the aforementioned authority, and to the rules which demand obedience, humility, silence, and poverty from all the brothers. If the statutes require that those who are admitted as brothers should be outstanding in terms of their virtues and the quality of their ministry, it must be understood that this refers to the time at which they are admitted, or to the state in which the brothers currently are, and not to any consideration of the past; since there is no mention of such a time in the statutes. Therefore, the statutes cannot be interpreted otherwise, and thus, Eleucadio Natali was justly elected, as confirmed by letters from both Prince Chigi and from Rmi Paulino Carlucci, both former superiors of the Venerable Archiconfraternity of the Most Sacred Heart of Jesus in the city of Romae, who, having been consulted on the matter, gave a response affirming the validity of the election, adding that the penalties prescribed by the statutes against the rebellious should also be applied. Regarding the other difficulty raised, concerning age, it was observed that this was not originally a rule, but was later established in certain amendments to the

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statutes by the Roman [Curia].

[*Latin ed. p. 115*]

The Piceni of Ascoli, or Fermo, concerning the Archiconfraternity, which, at least in this regard, do not appear to have been approved by the Bishop of Ascoli: indeed, several others, although having passed fifty-five years, were admitted, without any annotation or opposition being made to the matter. Regarding the judgment of the Archbishop of Fermo, it appears to have been just, even in that part in which the brothers Cantalamessa, the Count Saladini, and Ferrari were absolved from censure and suspension, as it is proven by the fact that they, contrary to what is prescribed in the statutes, chapter XIX, were suspended without prior warning and without sufficient reason. This is evident from the words of the four patrons of the confraternity, who gave this reason for the imposed suspension: that they had appealed to ecclesiastical authority against the Prior and the Prior brothers. Finally, that the Bishop has the right to confirm officials, is not at all doubtful, as is shown by the decree by which the Bishop Leonardi established the confraternity, where the following is read: "...and the officials are to be confirmed by Us and Our successors in Fermo." This is also confirmed by the Sacred Congregation of the Clergy, which, on May 3, 1725, responded to the question: "Is it permissible for a Bishop to remove officials and ministers elected by the confraternity, if they are not suitable and present grave exceptions?" with: "Affirmative." Therefore, it appears that all the deliberations, whether secret or general, held from August 26, 1882, are valid; nor is the election of the Prior, Marchion A. Odoardi, invalid, as was determined by the judgment of the Archdiocesan Tribunal. Furthermore, from the above, it follows that the Archdiocesan judgment should also be confirmed in that part in which the decree was that the brother Formica should be removed from the register of members. Having explained these matters for both sides, the Most Reverend Fathers were asked to consider the following question: Whether and how the judgment of the Archdiocesan Tribunal of Fermo should be confirmed or rejected in this case.

[*Latin ed. p. 116*]

116 ASCULANA PICENI, OR FIRMO. The Sacred Congregation of Bishops and Regulars, in a plenary session on July 27, 1888, issued a decree stating: "With the understanding that – the Archbishop of Fermo, together with the Bishop of Asculo, being persons with an interest in the matter and instructed in the controversy, should endeavor to resolve the matter peacefully. After unsuccessful attempts at reconciliation, the Archbishop of Fermo and the Bishop of Asculo submitted a proposal for reconciliation and a negative response from the Brothers, or rather, from Prior Odoardo to the Holy See. Upon receiving these, on December 21 of the year 1888, the

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controversy was again presented to the plenary session of the Eminent Fathers, under the aforementioned question. And the Eminent Fathers, hoping that the matter could be resolved for the good and justly, decided to respond: 'The Archbishop of Fermo shall inform the parties involved that, within a period of 10 days, they must accept the proposal for reconciliation, both as presented by himself and by the Bishop of Asculo, purely and simply. And if the Brothers refuse to comply, the Holy See will reopen the case, with the same terms, and will pronounce a judgment according to the norms of law.' However, since even this time the efforts of the Archbishops could not achieve the desired outcome, the case was again presented to the wise judgment of the Eminent Fathers, under the aforementioned question. RESOLUTION. The Sacred Congregation of Bishops and Regulars, after careful consideration, on March 15, 1889, decided to answer the proposed question with the following response: 'The judgment of the archiepiscopal court of Fermo is to be confirmed and upheld.' THEREFORE, IT IS DECREED: I. The extension of jurisdiction that the Bishop exercises over the sodalities of his Diocese is to be limited to that which is determined by the decree of institution or erection. II. Nevertheless, the Bishop has the right, by law, to visit these sodalities not only in their own chapels, but also in the churches of regular canons, in matters concerning the administration and fulfillment of obligations, or those matters that pertain to the Brothers. RESOLUTION.

[*Latin ed. p. 117*]

ASCULAN PICENUM, OR FIRMO, 117

III. To these [officials and ministers elected by the confraternity] the right and power are granted to remove those who are not suitable, and who present grave objections.

IV. It appears that the judgment of the archiepiscopal curia of Firmo has been confirmed in all respects, because the Bishop of Asculan, in the act of establishing the confraternity, reserved all rights to himself, which the Cardinal Vicar holds with respect to the Archiconfraternity of the Most Sacred Heart of Jesus in the city of Rome, to which the Asculan confraternity is affiliated.

V. These rights consist in the faculty of changing, reforming, and expanding [the confraternity], and of subjecting the Archiconfraternity to its ordinary visitation and jurisdiction, and to that of its successors, perpetually.

EX 8. CONGREGATION OF INDULGENCES

PRAYER

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ORATION TO SAINT JOSEPH

O you, blessed JOSEPH, in our tribulation we take refuge in you, and, having implored the help of your most holy Spouse, we also confidently entrust ourselves to your patronage. Through her, we beseech, who was joined to you with the immaculate Virgin, the Mother of God, grant us charity; and through the paternal love with which you embraced the Child Jesus, we humbly implore that you regard with a benevolent eye the dear inheritance that Jesus Christ acquired with his blood.

O you, blessed GIUSEPPE, afflicted by tribulation, we turn to you, and confidently invoke your patronage after that of your most holy Spouse. We implore that, through that sacred bond of charity which bound you to the Immaculate Virgin, Mother of God, and through the paternal love you bore for the child Jesus, you regard with a benevolent eye the dear inheritance that Jesus Christ acquired.

[*Latin ed. p. 118*]

118 FROM THE DECREE ON INDULGENCES, may you regard [our] needs, and may you help us with your power and aid. Protect, O most provident Guardian of the Divine Family, the chosen offspring of Jesus Christ; restrain from us, O most beloved Father, this plague of errors and vices that afflicts the world; assist us propitiously from heaven in this struggle against the power of darkness, O our most powerful Protector; and just as once you saved the threatened life of the little Jesus from death, so now defend the holy Church of God from hostile attacks and from every adversity: and extend your protection over each one of us always, so that, by your example, and through your help, we may live virtuously, die piously, and attain eternal blessedness in heaven. Amen.

Here, for those who, during the month of October, add the above prayer to the public recitation of the Rosary, the Most Holy Pope Leo XIII benignly grants an indulgence of seven years and the same number of quarantines. (Encyclical Letter *Quamquam pluries*, August 15, 1889). (1) (1) This letter is found in this volume, page 65.

[*Latin ed. p. 119*]

APPENDIX II. In which are recounted more decrees of the Congregation of Sacred Rites.

RUTHENEN. Among the doubts presented most recently to the Sacred Congregation of Rites by the Most Reverend Bishop of Ruthenen, and in which some, as having already been resolved, were omitted, the following were considered:

Doubt I. Which of the two Sundays are to be included under the name of "Dominica" within the Octave, one being the very day of the Feast having its Octave, and the other on the day of the Octave itself? And, since neither

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of these is to be considered the true and proper Sunday within the Octave, how many prayers, and what Preface, are to be assigned to those Masses of Sunday, when in some churches of Regular Canons, the aforementioned Mass of Sunday is celebrated, either by the force of its own rubric or by Apostolic concession, in addition to the other Mass, either of the Feast or of the day of the Octave?

Doubt II. Can a collect be added, and indeed must it be added, to the conventual Mass of the weekdays of Lent, or of the Vigil, or of the Four Times, or of Rogations, etc., which is celebrated in the Cathedrals and in the churches of Regular Canons after Prime, at least: 1°. A collect for the living, for example, for the Church, or for the Pope, even on the day of a Feast of the First Class? 2°. A collect for the deceased, whether obligatory or at the discretion of the celebrating priest, so that in these cases only the quality of the Mass is considered, and not the rite of the feast day?

Doubt III. According to the decree of the Sacred Congregation of Rites of August 13, 1701, in one Order of Eremite Fathers of Saint Augustine, who celebrates privately, or resumes the Mass of Sunday on the second or first day of the month, is he forbidden to say the second Prayer of the Faithful, both in the conventual Mass and in other private Masses, except for Masses of the Feria or of the Vigil?

Doubt IV. Does the collect for a particular deceased, ordered by the Ordinary, for example, for the deceased Pope or Bishop, enjoy a greater privilege, than the collect for the deceased, which is permitted at the discretion of the celebrating priest in private Masses, according to the decree of December 10, 1864, in one Order of Regular Canon Regulars of Lateran, No. 6, so that the obligatory collect must be said even in the conventual Mass, at least on those days on which the funeral collect is permitted at the discretion, according to the aforementioned decree?

[*Latin ed. p. 120*]

APPENDIX: Regarding Private Masses and also any Mass for the living which admits of more than two of the prayers from the usual set? The Sacred Congregation of Rites, after careful examination of these doubts, with the opinion of another of the Masters of the Sacred Ceremonies having been heard, decided to declare as follows: To Question I: Neither opinion is correct; regarding the second, as in the Missal with the Preface of the Trinity. To Question II: Affirmative to both parts. To Question III: Affirmative. To Question IV: Affirmative. And thus it declared and wrote. August 25, 1882. VICARIATE APOSTOLIC OF BOMBAY, NORTHERN. In the Vicariate Apostolic of Bombay, Northern, some Missionaries exercise parochial care in several towns which are very far apart, residing regularly in only one of them. In some of these places, blessed churches are located, to which the Christian communities belong as their parish church. Since a doubt arose: whether a Missionary assigned to these several churches,

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while residing properly in only one, is obliged to celebrate the "titular office" of all those churches, and that under the rite of the first class with an octave? The present Reverend Apostolic Vicar humbly requested a declaration from the Sacred Congregation regarding this doubt. And the same Sacred Congregation, after carefully considering the report of the undersigned Secretary, and after a prior vote of another of the Masters of the Sacred Ceremonies, decided to respond as follows: Negatively, considering the particular circumstances, but only for the church in which he usually resides, or the more important one. And thus it responded. August 25, 1882. ARGENTINA. The Reverend Brother, explaining the decisions of the Holy Apostolic See regarding the approval of litanies by Ordinaries in most dioceses of Germany, especially the warning of the Sacred Congregation of Rites of June 16, 1880, which has been interpreted in various and different ways, requested an authentic declaration from the same Sacred Congregation regarding this matter. Furthermore, the Sacred Congregation of Rites, after carefully considering the questions proposed by the Reverend Brother, deemed it sufficient to answer in the following single response: The warning to which reference is made pertains to litanies recited in liturgical and public functions; Ordinaries, however, can indeed examine other, or new, litanies, and to the extent that they judge it expedient.

[*Latin ed. p. 121*]

APPENDIX I. To approve; but only for private and non-liturgical recitation.

In Rome, on October 29, 1882.

To the Most Reverend Lord, and to the Reverend Brother Bishop, and also in other blessings, processions, and funeral associations (in French, *convois funèbres*).

The same Sacred Congregation, having received the following report from the undersigned Secretary, and after hearing the opinion of another Master of the Sacred Ceremonies, declares as follows:

When the Most Reverend Paul Matthew, Bishop of Adiacen, requested whether it could be permitted, in Valence, in Ambianen, and in Viterbien, for certain clerics, whether in a cathedral or in other churches, according to the ancient custom of the diocese, to wear the *Rochetto*, the *Mozzetta*, and the *Stola* above, it was declared as follows. On September 25, 1882.

(1) VALENCE. The Reverend Gustav Louve, Canon and Almoner of the Bishop of Valence, asks:

1. Whether he is obliged to wear the *Stola* over his choir vestments when assisting the Bishop, while celebrating Mass in a private oratory, or elsewhere; and, if not, whether he is permitted, without violating the rubrics, to wear the *Stola* in the aforementioned cases?

And the Sacred Congregation of Rites, having been convened today in

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its ordinary meeting at the Vatican, after receiving the report of the undersigned Secretary, decided to respond as follows:

1. "No."

2. "It is forbidden by the decrees."

On March 12, 1836.

(2) AMBIANEN. Refers to Volume IV, Acts of the Holy See, page 62.

(3) VITERBIEN. Although, by Apostolic Letters in the form of a Brief, issued by the Most Holy Pope Benedict XIV, from the year 1710, a grant was given to the Chapter, or Parish College of the Church of the City of Vetralla, within the Diocese of Viterbien, that the aforementioned Canons might lawfully and freely wear the *Rochetto* with its sleeves, and the *Mozzetta* of violet color, in ecclesiastical functions within their own church, and while proceeding collegially, nevertheless, with the passage of time, certain abuses have arisen in the use of these insignia, and some of the Canons of the aforementioned Parish College have proposed the following questions to the Sacred Congregation of Rites, in order to address them:

1. Given that the clause "when proceeding collegially" is present in the Bull of Benedict XIV, can the Archpriest of Vetralla, or any Canon separated from the College, and acting separately, whether within the Collegiate Church or outside, enjoy the use of the *Rochetto* and the *Mozzetta*?

2. Should the Archpriest be considered to enjoy this privilege, since he is the first among equals, although the Bull does not mention this particular circumstance?

3. Can the Archpriest, or a Canon in general, who is to administer the Sacraments of Penance, the Eucharist, and others, whether in the Collegiate Church or outside, wear the aforementioned choir insignia, with the *Stola* placed over them?

[*Latin ed. p. 122*]

APPENDIX II. DÜSSLINEN. Regarding the Feast of Saint Christopher, if it should occur on a Sunday, it is preferable to postpone it rather than to transfer it to another day, and therefore it should be transferred after the Octave; the Reverend and Most Reverend Lord Cardinal Edward MacCabe, Archbishop of Dublin, requested an opinion on this matter, concerning the Office of Purity of the Blessed Virgin Mary, which is observed with a double rite, on the first Sunday after the Kalends of May, without impediment to the double office. Furthermore, he inquired whether the Sacred Rites should be considered as occurring on the same day as the Feast, and therefore should be celebrated within the Octave. He also asked: 1. Whether a Superpellice and Stola must be properly used in the administration of the Sacraments and all Sacraments? 2. Whether it is permissible

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for a certain Archpriest, because of the office he holds as a Parish Priest, to administer the Sacraments in his parish wearing a Rochetto, Mozzetta, and Stola? 3. Whether this vestment may be used in the blessing of houses, which is performed on Holy Saturday? 4. Whether it may be used in a funeral procession, whether in his own or another parish? 5. Whether it may be used in a funeral procession together with the entire College of Canons? 6. Whether it may be used in public supplications, when the Archpriest walks together with the Chapter? 7. Whether there is any habit that is properly appropriate for the Archpriest, if he is present at the blessing of a marriage, which is administered by another priest appointed by him, and in that case, whether a Rochetto, Mozzetta, and Stola are required? 8. Whether the Archpriest or Canon properly uses choral insignia, and the Superpellice placed over them, in a procession, and if not, whether he may use a Rochetto, Superpellice, and Stola? And the Sacred Congregation, convened in ordinary session at the Vatican on the date indicated below, with me, the undersigned Secretary, present, after mature deliberation and in accordance with other decrees, decided as follows: 1. It is possible within a collegiate church, but not outside of it. 2. No. 3. No, and the previously issued decree must be observed. 4. No, but only in the case when wearing a Rochetto and Superpellice. 5. No. 6. No. 7. Affirmative, if he walks without a Stola. 8. As above. 9. Always in the case without a Stola, and with a choral habit only in his own church. 10. No, to the first part; affirmative to the second, if there is a custom. And thus it was written, and it was ordered to be observed. May 23, 1846.

[*Latin ed. p. 123*]

)ix n. concerning the intestines, it was declared: The feast is to be considered in the case. And so it was declared. On September 25, 1882. NIVERNEN. The Most Reverend Monsignor Stephen Anthony Alfred Lelong, Bishop of Nivernes, desiring to promote the splendor of divine worship and the more exact observance of the sacred liturgy, noted certain things which he brought to the attention of the Sacred Congregation of Rites, in order to obtain suitable solutions and concessions, namely: I. From a certain ordinance issued by one of his predecessors, and also from a less correct interpretation of a certain Indult, for fifteen years hence, the practice of beginning the solemn Exposition of the Most Holy Sacrament with a sung Mass had prevailed, and of celebrating the solemn or chanted Mass afterwards, before the Most Holy Sacrament which had already been exposed, for the purpose that a larger number of the faithful might be able to attend this second Mass celebrated at a later hour. Therefore, the same Most Reverend Bishop requested, according to the vote of his recently held Synod, that the practice described above might be lawfully maintained, as is at least tolerated, as can be read in a decree from Nicaragua dated September 27, 1864. II. In some churches, or public

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chapels of communities, although the Exposition continues throughout the entire night, the Most Holy Sacrament is placed in the repository in the late evening, so that a solemn blessing may be imparted to the faithful who have gathered, and it is then exposed again until the following day, when a less solemn deposition is made before or after a sung Mass. With these matters presented, the Most Reverend Monsignor requested that such a custom might be lawfully maintained. Furthermore, the Sacred Congregation of Rites, after receiving the report of the undersigned Secretary, and after a prior careful deliberation by another of the Masters of the Sacred Ceremonies, declared as follows regarding these requests: Regarding I. The aforementioned custom can be tolerated. Regarding II. Negatively. And so it was written. On September 25, 1882. Therefore, through the same Secretary, a report was made to His Holiness Pope Leo XIII regarding the Rescript of the Sacred Congregation itself concerning the first request; His Holiness deigned to approve that resolution, and to ratify it, on the 28th of the same month and year. CIVITATIS CASTELLI. The Most Reverend Monsignor Joseph Moreschi, the present Bishop of Città di Castello, humbly presented the following to the Sacred Congregation of Rites: In the calendar entrusted to his diocese, the feast day of the titular saints of the individual parishes is not recorded, and there are 160 such parishes.

[*Latin ed. p. 124*]

124 APPENDIX, requested with due propriety, so that not all pastors may perfectly fulfill their respective office, especially concerning the Octave, without transferring the Office, which falls either on the day of the Feast itself, or on the day of the Octave of the titular saint. Furthermore, when there are several parishes in the same place, the mother church, besides the titular feast, also has the feast of its patron, which in some places is celebrated under a double precept. There are also some parishes, which are cities or towns, as they say, "capoluoghi," located outside the diocese, endowed with their own particular patron; and some belong to two distinct cities or towns, indeed, the faithful of one parish may belong to three cities or towns. Moreover, neither the pastors of these churches ever celebrate the feast of a patron saint outside the diocese, nor do the faithful celebrate it under a double precept. Having explained these matters, the same Reverend Orator submitted the following requests to the same Sacred Congregation: I. What is to be done when the titular feast coincides with a feast of the first class, or with a privileged Sunday, or with Advent, or with Lent? II. Is it sufficient to simply commemorate the Octave on the day of the Octave of the titular feast, so that the feast occurring on that day may not be omitted, especially since there are many feasts inscribed in the diocesan calendar? III. Can and how can the Office of the feast of Saint [illegible] be transferred, due to the lack of a semi-double, and of

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weekdays in the calendar? IV. Is the Patronal Feast to be celebrated only in the mother church, or also in the others? The Sacred Congregation of Rites, after hearing the undersigned Secretary, and after hearing the opinion of another of the Masters of the Sacred Ceremonies, having duly considered all matters, decided to respond as follows: To questions 1 and 3: Sufficient provision is made by the table of occurrences. To question 4: Negatively to the first part; affirmatively to the second, provided that we are speaking of properly called patrons, and in a liturgical sense; and that the decrees are observed. And thus it responded. On September 25, 1882. ANNECIEN. The Reverend Aloysius Isoard, Bishop of Annecy, desiring that all matters pertaining to the sacred liturgy be properly and completely carried out in the diocese entrusted to him, approached the Sacred Congregation of Rites, humbly requesting a declaration regarding the following doubts: Doubt I. When the Exposition and Reposition of the Blessed Sacrament takes place immediately before and after Mass, or the Office, so that the celebrant and his ministers do not leave the altar, is it permissible to retain the cope and the altar cloths of the color required?

[*Latin ed. p. 125*]

APPE.MDIX n. The office of the day, especially when it is not so easy to change it at that time? Question II. A priest who celebrates the Mass in a chapel which is neither strictly public nor strictly private, such as chapels erected in seminaries, hospitals, and religious houses, which do not have an entrance open to the public, should he, with regard to the Mass and the color of the vestments, behave in the same way as if he were celebrating in a church, or rather, not differently than if he were celebrating in a strictly private chapel? The Holy Congregation, after carefully considering the questions presented by another Master of the Apostolic Ceremonies, and after receiving a report from the Secretary of the Sacred Congregation, decided to respond as follows: To Question I. Affirmative. To Question II. He should conform to the diocesan calendar, unless the chapel has a special privilege in this matter. And so it responded, declaring. December 1, 1882. POLICASTREN. The following questions were proposed to the Sacred Congregation for consideration by the Most Reverend Joseph Maria Cione, Bishop of Policastren: Since, in the consecration of altars, according to the declaration of the Sacred Congregation in Saint-Flour on February 9, 1807, the priest makes two signs of the cross with the right thumb, dipped in the oil of catechumens, over the five parts prescribed by the Roman Pontifical, and since the same Pontifical (as in the consecration of the paten and the chalice) commands the priest to anoint the paten from edge to edge and the chalice from lip to lip with the holy chrism, the following questions are asked: Question I. In the consecration of the paten and the chalice, should the priest not anoint the paten and the chalice with two crosses or only one, using the thumb anointed with the holy chrism, while

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saying "May it be consecrated and sanctified"? Question II. And to the extent that the first part is affirmative, can chalices and patens be validly consecrated if only one sign of the cross is imprinted on them with the thumb? Question III. And to the extent that the second part is negative, are the ordinations of the sacred ministers to be considered invalid if chalices and patens which have not been validly consecrated as described above are used? And the Sacred Congregation, after receiving the report of the aforementioned Secretary, and after hearing the opinion of another Master of the Apostolic Ceremonies, decided to respond to these questions as follows: To Question I. Affirmative, in part. Negative, in part. To Question II. Affirmative. To Question III. Provision is made in the preceding response. And so it responded. December 1, 1882.

[*Latin ed. p. 126*]

126 APPENDIX II. CEPHALUDEN. NESQUALIEN. The present Superior of the Brotherhood called "of the Most Holy Cross," located in the place commonly called Lascaris, within the Diocese of Cephaludden, presented to the Sacred Congregation for Rites a Brotherhood established under the title of the Most Holy Virgin of Mount Carmel, there, in the month of April of the year 1881, and subsequently, in the month of September of the same year, the aforementioned one, which takes its name from the Most Holy Cross. Since a dispute recently arose between the two concerning precedence in processions, since one claims precedence by reason of its title, and the other by reason of the priority of its institution, the aforementioned Superior humbly inquired of the Sacred Congregation: To which of the two aforementioned sodalities does the right belong to precede in the sacred processions? The same Sacred Congregation, after due deliberation with the undersigned Secretary, and after hearing the opinion of the Most Reverend Bishop of Cephaludden, for information and a vote, decided to declare: That precedence in this case belongs to the Brotherhood under the title of the Most Blessed Virgin of Mount Carmel, and that therefore, it should precede the clergy in the processions, as had already been decreed by the Bishop. And thus it declared and wrote. December 1, 1882. "According to the decrees of the Sacred Congregation for Rites, it is forbidden to adorn the altar where the Most Holy Sacrament is reserved with a black cloth, and with a pall of the same color, during funerals and sung Masses. However, in some places in the Diocese of Nesqualien, the Most Holy Sacrament is reserved either in the main altar of the church, or in a single altar, when the others are lacking. The present Bishop of that same Diocese inquired of the aforementioned Sacred Congregation: Does the prohibition mentioned above apply to the altar where the Most Holy Sacrament is reserved outside of the time when it is exposed, and in churches where such an altar is the main or only altar?" The Sacred Congregation for Rites, after due deliberation with the undersigned Secretary, decided to declare:

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That in such a case, both the sacred Tabernacle covering and the altar pall should be of the violet color. And thus it declared and wrote. December 1, 1882. ROME. In the Collegiate and Parochial Church under the title of Saints Celsus and Julian in the City, the Feast of Saint Mary Magdalene the Penitent is celebrated with a more solemn rite on July 22, because of the illustrious Relic of that Saint, and on the following day, July 23, the Feast of Saint Liborius, Bishop and Confessor, under the same.

[*Latin ed. p. 127*]

•ix n. according to a double rite, equally for the sake of the notable Relic; The Most Reverend Lord John Baptist Annibali, the present Archpriest of the aforementioned Church, humbly requested a declaration from the Sacred Congregation of Rites regarding the following doubt: Whether the Vespers on the 22nd of the month should be celebrated with the preceding commemoration of Saint Liborius, or rather, of Saint Liborius with the commemoration of Saint Mary Magdalene? The Sacred Congregation of Rites, having heard the opinion of another of the Masters of the Ceremonies of the Apostolic See, and after carefully considering the report of the undersigned Secretary, has decided as follows: In this case, the Vespers are to be shortened according to the rubric in title XI, concerning the concurrence of the Office, number 2. And so it is decreed. December 1, 1882. VICENTINA. To the Sacred Congregation of Rites, the present Most Reverend Bishop of Vicenza has proposed two following liturgical questions for a suitable solution, namely: I. Even after the Constitution of Pope Pius VII, *Decr. Rom. Pontif.*, July 4, 1823, the Sacred Congregation of Rites declared that it is permissible to maintain, by an immemorial custom, that a Deacon and a Subdeacon, besides the sacred ministers, assist at the canonically solemn celebration; it is doubted whether this priest can perform his duties in the manner of a priest assisting the Bishop in a solemn celebration, as Bauldry and other ancient rubricists report, or whether he must only assist at the book, as the rubrics of the Missal permit in the rite of celebrating Mass, chapter VII, number 11, and chapter VIII, number 8, without a stole and only with a cope? The reason for the doubt is that, in the aforementioned Constitution, which Bauldry and other ancient rubricists did not know, it is entirely forbidden to use the rites and ceremonies proper to Bishops without a special indult from the Apostolic See, notwithstanding any firmly established customs, and because the use of a priest assisting in the pontifical rite is expressly prohibited in Canon 16 of the Decree confirmed by the aforementioned Constitution, as is also the case for the Protonotaries Apostolic, who are called "Participants," in Canon 15 of the Decree of the Constitution of Pope Pius IX, *Apostolicae Sedis Officii*, August 29, 1872. II. Can a priest, solemnly celebrating his first Mass, be assisted by a priest with a stole, besides the sacred ministers, as mentioned above, notwithstanding the decrees of the Sacred Congregation of Rites, and especially the Decree

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of March 15, 1721, in Pistoia, in which such abuses are entirely forbidden in the solemn Mass of any simple priest? The reason for the doubt is that some maintain...

[*Latin ed. p. 128*]

128 It was permitted, as it appears, by a more recent Decree of March 11, 1837, in Matelichen. In it (they themselves say) only certain actions of this assisting Priest with the Pontifical are prohibited, such as the sprinkling of blessed water before Mass, the carrying of the stole beneath the Pontifical, the ministering of the paten for the Communion of the faithful, and the performing of the incense, which is normally done by a deacon, etc., but the assistance of the Priest himself with the Pontifical is not prohibited. Furthermore, the Sacred Congregation of Rites, by a carefully considered vote of another of the Masters of the Sacred Ceremonies, referring to the Secretary below, declared as follows: To I. Negatively, to the first part; to the second part, where it is an immemorial custom to assist with the Pontifical at the book. To II. It can be tolerated, provided that he only assists at the book. IX II. And thus it was declared and written. On December 1, 1882. OF THE SOCIETY OF JESUS. When the Reverend Father John Mary Cybeo, a Missionary of the Society of Jesus in Brazil, requested from the Sacred Congregation of Rites that it be permitted to him and to the other Missionaries of that region to bless palms outside of the Paschal season, which the faithful usually have blessed by the Missionaries, and that this be done according to a particular formula proposed by him; the same Sacred Congregation, considering the report of the Secretary below, decided to approve these requests, so that the formula which is noted in the Appendix of the Roman Ritual for the blessing of any object, or for all things, should be used. On December 5, 1882.

[*Latin ed. p. 129*]

129 FROM THE HOLY CONGREGATION OF THE COUNCIL BALNEORB&IBN. OF COMMUTATION AND ABSOLUTION, February 16, 1889. Through summary petitions. SUMMARY OF THE CASE. The priest Dominic Pacifici, from the place of Fondi, bequeathed his property to his heirs in the grotto of Saint Stephen, where he died in the year 1850, under the condition that they never sell, nor divide their inheritance; and with the obligation of reciting the Rosary for the dead every week in the parish church, and of reciting Mass with singing every year on July 25th, perpetually, in said church. Six small parcels of land, which at that time were estimated to be worth 6684 scudi, constituted the hereditary estate; but, as the Bishop states, one of these parcels of land, whose value is approximately 500 scudi, passed to a third party, by title of legacy, left by the testator himself. Furthermore, in the year 1883, the Fulvi family succeeded, who are the petitioners in this case, and they state that, when they acquired

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the inheritance, they found a large debt registered against it, and other difficulties; so that it was necessary to free it, and to sell part of it, and to engage in lawsuits; as a result of which, the inheritance has been greatly diminished, and reduced to approximately 3000 scudi, according to the petitioners; or to approximately 5000 scudi, as the Ordinary believes. He states that two parcels of land remain for the heirs; one of which is worth 4111.40 scudi, and the other 949.93 scudi. This difference may perhaps arise from a different method of estimation, one being cadastral, the other real. After these statements, the petitioners relate that, for these reasons, they have abstained from fulfilling the obligations in recent years, and, because of the prompting of their conscience, they are distressed, and request absolution for the past, both concerning the sale and concerning the omission of pious acts.

[*Latin ed. p. 130*]

130. Concerning the aforementioned works, and furthermore, a reduction of obligations in the future to one or two selected Masses. The parish priest, when asked, responded: "It seems fitting to grant the petition, since the Rosary for the dead can no longer be recited sufficiently due to a lack of priests." This, however, is not understood; for there is a parish priest in the place, or another priest who could perform this small work, certainly with some compensation, on certain days of the week. The Bishop, however, believes that, due to the lack of priests in that place, the recitation of the Rosary for the dead and the Mass with singing should be replaced with a certain number of Masses offered in perpetuity; but under the condition that this obligation be imposed on the benefactors themselves.

A Synopsis of the Discussion: While words were spoken about the most holy law that commands the observance of pious intentions, and conversely, about the power that the Church has in cases of necessity and evident utility to make changes, one point was noted: by a higher power, the benefits bequeathed were diminished. Indeed, it is certain that originally six portions were bequeathed, of which one, as testified by the Bishop himself, passed to a third party; the others were sold for a foreign price and became the subject of a lawsuit; and only two portions remain to the benefactors; whether these are worth 3000 livres, as the benefactors claim, or rather 5000, as the Bishop estimates, is irrelevant; since, in any case, the portion is greatly diminished. Furthermore, equity suggests that the obligations should be reduced, at least as a matter of grace, if the income has been greatly diminished. "Indeed, as Fagnanus teaches in chapter Eoe parte, number 2, De const., the fruits should correspond to the obligations." This applies especially when the diminution is due to calamities or public taxes, as happened in this case, S. C. C. in Mazarien. Reduci, miss. 11 July 1846. Nevertheless, even with the recitation of the Rosary for the dead once a week, and the annual celebration of one solemn

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Mass,

[*Latin ed. p. 131*]

BALNEOREGIEN. 131. A small burden, which does not appear to exceed the strength of the remaining inheritance, was remitted. It was left to the Fathers to decide whether the prayers seemed worthy of grace. After these observations, it was inquired how the prayers should be granted. RESOLUTION. The Sacred Congregation C., having considered the matter on February 1, 1889, decided to respond: For the grace of absolution concerning the past, three Masses shall be celebrated; concerning the grace of commutation, a Mass with singing shall be offered in place of three chosen Masses, and the recitation of the Little Crown shall be recited twice in the month; five hundred livres shall be given to the Bishop by the same person, to be carefully investigated by him for the implementation of the endowment in perpetuity, having made a verbal agreement with the Most Reverend [unintelligible characters].

NEAPOLITANA (1). CONCURSUS. On May 4, 1889, Session 24, Chapter 18, Concerning Reforms. SUMMARY OF FACTS. On October 11, 1886, the parish church of St. Mary of Graces in Monte Sancto was vacated due to the death of the pastor. The Reverend Joseph Contarini was elected as the new priest, who, together with the priests Adam Oriente and Salvatore Ciliberti, presented himself for the competition, which was held on March 21, 1887. However, Joseph Contarini, because he did not deliver the homily on the text of the Gospel according to the schema of doctrine that had been proposed to explain that passage of the Gospel, but rather on a different subject, was not deemed worthy of either approval or disapproval, but was rejected from the list of those to be examined. Ciliberti was approved; but among all the candidates, Adam Oriente remained elected.

(1) See regarding the matter of the competition, Volume VII, 340, 467; XI, 131, note at the bottom; XIII, 119; XV, 370; XVII, 542, 597; XIX, 295.

[*Latin ed. p. 132*]

132 In Naples, the priest Contarini, regarding this matter, having been long deceived by vain promises and delayed, did not cease his delays, nor did he appeal to the Holy See against the unfavorable report of the examiners until April 27th of the following year, 1888. The priest Contarini chose a patron, who duly wrote out his argument in print. To this are added two small works completed by Contarini himself. But the consultant clearly and concisely explained all that pertained to the matter, so that his opinion eminently contained the very things that Contarini's patron had argued in favor of his client. And therefore, in his official opinion, he only noted what appears to be contrary to the plaintiff and in favor of the court and the invested parish priest, namely, that an appeal against an unfavorable report of the examiners or against an unreasonable judgment of the Bishop can

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only be presented within ten days. Thus, expressly, Clement XI, in *Apostolicae Sedis*, paragraph 10, January 1, 1721, and confirmed by Benedict XIV, *ad alia*, states: "After the collation, according to this formula, and after the parish has been conferred upon him who is judged more suitable and worthy, no appeal is admitted, either against an unfavorable report of the examiners, or against an unreasonable judgment of the Bishop, unless it is presented within 10 days from the day of the collation." Furthermore, the appeal of the priest Contarini appears to have been presented long after the collation of the benefice, since more than a year had passed since the examination was completed. However, whether leniency should be shown in this case, either for the sake of justice, or because if Contarini had not been delayed, he would not have presented a formal appeal within ten days, this is left to the discretion and equity of the Most Eminent Fathers. Synopsis of the Discussion. OPINION OF THE CONSULTANT. Before we examine the rest, said the Consultant, two things must be inquired into here, namely: 1. Whether it is truly essential that a written statement be presented with the appeal.

[*Latin ed. p. 133*]

NEAPLES 133: Is it permissible to adapt the evangelical text to the circumstances, and to do so under penalty of nullity? 2. And, with regard to the matter itself, did the Reverend Father Joseph Contarini not write a treatise in accordance with the intended evangelical text? The Consultor then asked: "In the case of competitions for vacant parish churches, is a treatise absolutely and substantially necessary, so that, if it is omitted, or not written in accordance with the intended evangelical text, the competition itself should be considered invalid and null for this reason alone?" And I confess, I have always held the opinion that it is not absolutely necessary in parishes to have a treatise, since neither is this explicitly nor implicitly required by the Council of Trent. Indeed, that the Council of Trent does not explicitly require a treatise in parishes is clearly deduced from its own words. Whenever the Council speaks of the examination of those competing for vacant parishes, it always speaks of testing their suitability in terms of age, morals, doctrine, prudence, and other qualities suitable for governing the vacant church, without using any special words regarding suitability for preaching the Gospel of Christ. I know indeed that the Council of Trent requires that pastors, on certain days, at least on Sundays and solemn feasts, feed the flock entrusted to them with salutary words; Session 5, De Reform, chapter 2. I also know that there are, and indeed very serious, authors who teach that pastors, unless they are legitimately hindered, are obligated to provide this themselves, so that they would greatly fail in their duty if they entrusted this to others for a year. But how these things should be understood is explained by those provincial councils that were held immediately after Trent, especially for the purpose of putting into practice

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what had been sanctioned by the holy synod. Hence, the Council of Milan adds an examination, 1, presided over by Saint Charles Borromeo, which, after the decree of the Council of Trent concerning the sermons to be given by pastors,

[*Latin ed. p. 134*]

134 In Naples, the Fathers speak thus: "But if anyone is unable to do this due to ignorance, let them turn to experts, imploring their help, either by reciting the homilies prescribed to them, or by reciting in the vernacular language the Latin sermons of the author approved by the Church, provided that they have been approved by the Ordinary, either from memory or from writing. This will continue until a collection of homilies suitable for the use of these pastors is published by the Metropolitan." Part I, chapter VI. The Council of Bituricum, held in the year 1584, holds a similar view, as evidenced by title III, canon II, which states: "Let the Bishops see to it that the pastors of the parochial churches preach the word of God to the people on each Sunday. . . . and if they are unable to preach themselves, let them either recite from memory, or at least read, homilies in the vernacular language, which are prescribed to them by the Bishop." The Council of Milan and the Council of Bituricum are in agreement, and indeed, the Council of Burdigala expresses this sentiment most explicitly when it says: "But since most of the parish priests are less capable, therefore we decree that each one should have with him a book in the French language, published and approved by Us and Our co-bishops, so that they may use it readily, until a collection of homilies is published by Us. We command all parish priests, whoever they may be, to recite on Sundays and feast days, from the homilies and sermons published, a homily appropriate to the day, and adapted to the people; or, according to what the Council of Narbonne states in chapter 32, by reciting in a prescribed manner; or, as the Council of Aix states concerning parish priests, by choosing the homilies of the Fathers; or, as the Council of Rome suggests concerning parish priests, by using the Roman Catechism; or, as the Council of Embrun states in chapter V, by reading the customary form of instruction. Therefore, Benedict XIV, in his Notification X, states: "We believe..."

[*Latin ed. p. 135*]

NEAPOLITANA 135: "Parish priests are not obligated to deliver a formal sermon, but rather a simple, domestic discourse, adapted to the capacity of the people." This sentiment is more clearly expressed in the Councils of Tours, Cambray, and Rheims, which state: "In the beginning... the Lord's Prayer, the Angelic Salutation, the Creed, the method of confession, the number of sacraments... should be explained to the people in the vernacular language." (Conc. Turon. c. 14). "If they are less learned... they should be content with a simple doctrine of the Church, and exhort the people to

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fear the Lord." (Conc. Camer. § F, c. 3). "Let the curates teach those things which it is necessary for all to know for salvation. And if they themselves are not sufficiently suited for this, they should call upon those who can devote themselves to this task as often as possible." (Conc. Rhem. Stat. II). Furthermore, the Councils of Narbonne and Bordeaux also decreed that parish priests must send to their bishops, each month, excerpts from the homilies of the Fathers, as a testimony of their own abilities. Therefore, the consulter argues that it cannot be proven, either implicitly or explicitly, from the Council of Trent, that parish priests are obligated to possess the ability to effectively preach the Word of God; since those sermons, to which they are bound for the edification of the people, can be taken from the homilies of the Fathers, or from approved authors, and these can be either recited by heart, or even pronounced from writing. All of this can be done even by one who lacks any ability in speaking. However, it is certainly required, at least by current discipline or custom, that a parish priest be able to address the people on his own, without resorting to approved authors, and to the homilies of the Fathers, either reciting them by heart or reading them from writing. Therefore, even in this hypothesis, it cannot be proven that a certain qualification is so necessary in competitions for vacant parishes that, if omitted, the competition would be considered invalid.

[*Latin ed. p. 136*]

136 In NEAPOLITANA, two things must be carefully distinguished: namely, proving the suitability of a candidate in their declaration, and proving that suitability through a certificate. The former can, to some extent, be derived from the Tridentine Council, but the latter cannot in any way. Therefore, whenever the suitability of a candidate for preaching the word of God can be legally proven from the acts of the examination, it would be absurd to declare the examination invalid and null simply because a certificate was omitted. However, it can be clearly and convincingly proven by examiners, through multiple arguments, that a candidate is suitable for preaching the word of God, independently of a certificate, namely: 1. if it results from the acts of the examination, such as from the record of requirements, that the candidate had already been approved for preaching the word of God through a separate special examination; 2. if it is evident from the same record that the candidate excels in the ministry of preaching, and has repeatedly fulfilled their duties with merit and fruitfulness of souls; 3. if it is proven by documents that the candidate has already received other duties from their Most Reverend Ordinary, to which the office of preaching is necessarily attached. Even if only one of these is verified, it is sufficient, and the candidate's suitability will remain proven, so that it would be ridiculous to doubt their suitability solely because a certificate was not issued. Nor is it valid to appeal to the Encyclical Letters of this Holy Congregation, which were published on

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January 10, 1721, and which were confirmed and expanded by Benedict XIV in his Constitution, which begins "Cum illud," dated December 14, 1742. For the meaning of this Constitution and these Letters will be made clear by history, by the following resolutions, and finally, by the evident meaning of the words themselves. And it is well known that this Holy Congregation, both in the Cassano examination and in the Nuceria Parochial examination of May 11, 1720, responded in such a way as to "inquire whether there was a way to restrain frivolous appeals made by those not approved in the examination."

[*Latin ed. p. 137*]

NAPLES 137, either from the bad character of the examiners, or from the unreasonable judgment of the Bishop. "Hence, to Lambertini's secretary, several things emerged – *Dubia Concursuum* – carefully and wisely composed, among which this is perhaps the most important: 'Should it be prescribed that each of the competitors write a discourse on a passage from the Gospel, to be assigned to all the competitors?'" Indeed, the Sacred Congregation of the Holy Office, in a plenary session held on November 16, 1720, in order to respond to this question, decided: "Affirmatively, in the form of an instruction." Hence, with the approval of Clement XI, the aforementioned letters were published, which Benedict XIV confirmed and expanded upon in his Constitution *Cum Illud*. Therefore, what element will be considered necessary for the validity of the competition, when the Sacred Congregation proposed it in the form of an instruction? If we carefully consider the words of the letters, we will certainly see that the intention of the Sacred Congregation was to encourage Bishops, and to propose a method to them, not absolutely, but out of mere counsel and persuasion. For it is said: "The Sacred Congregation, interpreting the Council of Trent, encourages all and each Bishops, and other prelates, to whom it belongs and who have the right and authority to hold a competition, not to burden themselves with such an examination, as has already happened in many dioceses, etc., and therefore... the following are proposed, according to the judgment, counsel, and persuasion of the Sacred Congregation." Indeed, he who proposes does not impose, he who persuades does not command, he who encourages does not order. And if those things which contain a command pertain to the substance, those which are proposed by counsel and persuasion should be considered to pertain only to the form. But those things which pertain to the form do not destroy the substance if they are lacking. What more can be said? Let us assume that the composition pertains to the substance of the competition. But, I ask you, how can it be deduced with such necessity that it must be written on a passage from the Gospel, so that, if this is not done, the competition becomes null and void? If I am not mistaken, those who think this must derive their argument from

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somewhere.

[*Latin ed. p. 138*]

138. From Naples, according to that opinion which was presented by this Holy Congregation, at the assembly in Benevento, on December 19, 1857. Regarding the question of whether an assembly is valid if the composition presented by a participant does not pertain to the topic proposed by the Bishop, the answer was affirmative.

To this response, the following reasoning was given by the secretary: that the participant presented a composition most suitable to the evangelical text. Some might infer from this that the Holy Congregation's response would have been negative if the participant had not presented a composition on the evangelical text. But this is incorrect. The secretary's intention was to exclude the suspicion that the participant had a prepared composition; and this is demonstrated by the fact that, if the participant did not present a composition on the topic proposed by the Bishop, but did present a composition on the evangelical text, which, unbeknownst to him, had been proposed, then the validity of the assembly would not be called into question, but rather there would be a need to investigate other arguments to dispel the suspicion that the participant might have had the composition prepared by someone else; in which case, the validity of the presentation would not be proven. These subsequent words I have considered it prudent to add, so that it may become more and more clear what the purpose of the composition is, and its necessity in the assembly. And indeed, it is true that, from what has been discussed above, a pastor is not strictly obligated to preach, unless he has been specially examined and approved for this purpose by the Bishop; it follows that in assemblies for parish churches, a composition is not required in order to demonstrate whether the participant knows how to interpret Holy Scripture, but rather in order to demonstrate whether he possesses some capacity in speaking; which is certainly sufficient to enable him to explain to his flock those things which are necessary for obtaining salvation. This can be demonstrated through a composition, even if it is not suited to the evangelical text. Therefore, the Council of Milan V, in order to demonstrate whether participants know how to compose and deliver sermons, requires that...

[*Latin ed. p. 139*]

NEAPOLITANA 139: They must state from whence they obtained [their qualifications], or how they have justified the granting of [these qualifications] to them. And then, he adds, the following question must be asked: "Can they demonstrate anything of this [knowledge] at a given time?" And then, with a brief and impromptu discourse, the danger lies in how well they can preach. But, I beg you, who could ever fail to understand that it is one thing to prove whether someone possesses [certain qualities], and

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quite another to demand that someone demonstrate [these qualities] impromptu; so that, if they do not perform well in this regard, they should be utterly condemned? Indeed, I certainly know that a distinction must be made between a parish church and a parish church, especially because the suitability of the candidates must be proven not absolutely, but in relation to the vacant church. Therefore, although someone might deserve approval for a parish church if they need the writings of others to instruct the flock; that person certainly would not be approved for a city church, and much less for a cathedral church. But it does not follow from this that the impromptu discourse is the only and absolute means of proving the candidates' ability to preach. For, as I have already said, this can be proven either by the experience of examiners, or by the testimony of discerning men, or by some action originating from the Ordinary's court. Each of these, or some of them, if they can be obtained from the records of the competition, will demonstrate the candidate's suitability in a legally sound manner, even if, through a momentary lapse of mind, or involuntary distraction, or some other special cause, the impromptu discourse was written less correctly and less adequately. If this last happens, at most, the number of favorable votes will be reduced; but to reject the candidate solely on this basis, especially if everything else has been done correctly, would, if I am not mistaken, be the greatest injustice. Therefore, regarding the question at hand, in my opinion, but subject to the better judgment of others, I believe the answer should be: "No, and with a mental reservation. For although the impromptu discourse pertains to the form of the competition, and must be written by all according to the meaning of the letters of January 10, 1721; yet, with regard to the substance, and considering the diverse nature of the parishes..."

[*Latin ed. p. 140*]

140. In NEAPOLITANA, a competition shall be deemed sufficient if the ability of any candidate in speaking is proven by the records of the competition, even independently of the homily.

A consultant inquired: "Is it truly the case that the competition held by D. Joseph Contarini, as in this instance, must be declared null and void, due to the absence of a homily? If any arguments can be presented to demonstrate the suitability of a candidate in speaking, surely all of these are found in the competition held by the aforementioned D. Contarini; for his suitability in speaking is demonstrated in three ways, namely: 1. by the most serious argument of presumption; 2. by the testimony of others, which is beyond reproach; 3. by the very homily which he wrote for the competition itself. Therefore, the Neapolitan examiners, in declaring his competition invalid with regard to his knowledge, because he did not compose a homily suitable to the proposed scriptural text, and thus caused injury or great offense to the Most Reverend Archbishop, and inflicted a grievous burden

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upon the aforementioned candidate. And in truth, it must be known that D. Contarini did not present himself spontaneously for the competition, but was called to it by his Most Reverend Archbishop, who, moreover, had already appointed D. Contarini as the economic administrator of that parish, for which he had been called to the competition. Therefore, the Most Reverend Archbishop had recognized D. Contarini's suitability for preaching the word of God in two ways: 1. by calling him to the competition, since the Bishop ought not to call anyone, unless he considers them suitable; compare this with the Council of Trent; 2. by entrusting him with the administration of the parish's finances, thereby assigning him the duty of preaching. Therefore, the Neapolitan examiners, in declaring D. Contarini's competition invalid, precisely because he did not compose a homily suitable to the scriptural text, judged him to be unsuitable, whom the Most Reverend Archbishop had already declared suitable, and not fit to preach the word of God, to him to whom the Bishop had already entrusted the duty of preaching. And how did the Most Reverend Archbishop respond to this?!"

[*Latin ed. p. 141*]

NAPLES 141. I confess that one must strive for justice, and render judgment according to conscience, notwithstanding any obstacles. But I am astonished that justice was found to be present where, most clearly, injustice is evident. And indeed, if we examine the acts of the competition, we shall certainly see that the suitability of the Reverend Contarini for preaching the Word of God was beyond all doubt, and that he should be considered as such by all. For, from the extensive testimony of others, which is found in the record of the candidates, and against which no exception was made by the examiners, it is most clearly evident that the Reverend Contarini was very capable in the threefold ministry of preaching, namely: 1. in that preaching which takes place during missions, in which he showed zeal and dedication; and since he was one of the missionaries of Saint Bridget, 2. in preaching the Word of God to a studious youth, to whom he gave many sermons over the years; 3. and finally, in preaching to the people in public sermons, with great merit, according to the charity of Jesus Christ and for the advancement of souls. Therefore, on what grounds do the examiners consider him less suitable for preaching the Word of God, when they know, from the acts of the competition, that he has sustained the ministry of preaching for many years with great merit, zeal, and advancement? Alas! What a deplorable state of affairs! The examiners considered the discourse of the Reverend Contarini to be unsuitable for the scriptural passage that had been proposed by the Most Reverend Ordinary. And so it would be! But, on the contrary, I am astonished at how such a judgment could have been rendered. For it must be known that the passage proposed was taken by the Most Reverend Archbishop from the Second Sunday after

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the Fourth Sunday of Easter; in which the Gospel of John is read concerning the expulsion of the buyers and sellers from the temple of the Lord. Indeed, this expulsion, which cannot be confused with another of which the other Evangelists speak, took place at the beginning of the preaching of Christ. Therefore, Cornelius a Lapide rightly notes that Christ willed that his preaching should be pious, just, and in proper order, beginning from religion and the house of God, expelling those who profaned it, namely the buyers and sellers. Hence, the Apostles...

[*Latin ed. p. 142*]

142 In Neapoli, the preachers are urged to dedicate themselves to the same preaching of Christ, so that they may follow the example of Christ. (In Evang. Ioan. II, 14). Therefore, what does the Lord Contarini say? After asserting the efficacy of the Word of God, he demonstrates in his discourse how Jesus Christ provides us with a most excellent example in the present Gospel, especially to teach us priests how to preach the Word of God with zeal, particularly out of reverence due to the Church. From this, and with several examples, he shows that the divine Word, preached by priests with zeal, is more powerful in its effect and sweeter in its savor. Indeed, he confirms this by stating that all good things should be attributed to the preaching of the Word of God, because the Word of God is life, and outside of it there is nothing but death. Having established these points, he describes those who do not hear the Word of God, and seems to establish a certain comparison between them and those who profane the Temple of God, in order to show that there is no more suitable means to dispel the profanations of the human heart than the holy Word of God preached by priests. He asserts and proves that if this Word of God sometimes does not bear fruit, it is because people approach the Church with little reverence, and for a different purpose than to obtain benefit; as if comparing these Christians with those who went to the temple not to worship God, but to profane the temple itself. I confess that all of this was presented by Lord Contarini, neither in a well-organized manner, nor sufficiently explained, nor in perfect order. Furthermore, if the Examiners wish, it is possible that Contarini may have asserted something that would not be entirely in accordance with the harmony that existed between his words and the scriptural text. However, they do not prove that the discourse in question is not suitable to the scriptural text; I do not know, in substance.

[*Latin ed. p. 143*]

NEAPOLITANA 143, concerning which, it seems that a more suitable explanation could not be devised. Therefore, since the suitability of the Reverend Contarini for preaching has been proven, and indeed, from the records of the proceedings, 1. by presumption, 2. by testimony, 3. by experiment, it is already evident that the aforementioned question must be

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answered in the affirmative. - Negatively. Therefore, given these circumstances, the following questions arise spontaneously and must be resolved: I. Is there grounds for an appeal based on the unfavorable report of the examiners in this case? II. Does the nullity of the proceedings in this case exist? III. How should provision be made in this case? And concerning the first question, there is no doubt that the answer must be affirmative. - For it is established that harm has been inflicted upon the Reverend Contarini, and that for a twofold reason: firstly, the examiners erred in both law and fact; in law, because they considered the written summary to be the sole substantial means of proving the suitability of the candidate for preaching, and they considered that it must be absolutely drawn up concerning the evangelical text, under penalty of the nullity of the proceedings; and secondly, they evidently erred in believing that the written summary drawn up by the Reverend Contarini was not suitable for the evangelical text, whereas it is, in fact, the most suitable. Therefore, since the harm is certainly established, it seems reasonable to grant the Reverend Contarini the right to appeal against the unfavorable report of the examiners, even if the time allowed by law has elapsed. Therefore, I believe that the answer to the aforementioned question should be: with prior restoration to the original state, affirmative. No less clearly, the answer is evident concerning the second question: where the right of someone has been certainly violated, the act itself is null. Moreover, in this case, the matter is of greater importance, because if the examiners had presented a just judgment, the Reverend Contarini would undoubtedly have obtained the vacant church, of which he was already administering. And indeed, setting aside even the extrajudicial arguments, which are abundant, it is certain from the records of the proceedings, namely from the memorandum,

[*Latin ed. p. 144*]

144 In Naples, based on the reports of the investigators and the resolutions of the completed cases, it was determined that Lord Contarini could have obtained a sufficient number of favorable votes to be approved in the first place. However, in this case, who would believe that the Eminent Archbishop did not consider him to be among the elected candidates for the vacant church, which he had already entrusted to his administration? Furthermore, as testified by Fagnano in chapter Eam te, number 15, which Benedict XIV cites in *De Syn. dioec.*, book IV, chapter VIII, number III, the Holy Congregation, on August 2, 1607, declared that a concurrence was invalid if the examiners did not report that the candidates were suitable in all respects, as required by the Council. But in this case, the examiners, with a false and erroneous judgment, did not report, except with regard to the sole requirements, without any mention of doctrine, and certainly without any mention of the resolutions of the cases. Therefore, the concurrence must be considered entirely invalid. Therefore, it seems that the answer

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to the proposed question is: "affirmative." And this pertains to the first and second questions, regarding which no question or doubt seems to be admitted. But it is not so when the discussion turns to the third question, regarding which a serious and most difficult dispute arises. The question can be raised in three respects, hence a threefold method of providing a solution, namely, either by holding a new examination in the curia, or by granting the benefice, in the name of the Holy See, in favor of Lord Contarini, or finally, by some kind of settlement between the parties, by virtue of which Lord Contarini would be provided for equivalently by the Eminent Archbishop. And indeed, whenever, after proof of a grievance, the question has been raised regarding the judgment given by the examiners concerning the doctrine of the candidates, the Holy Congregation has considered it necessary to hold a new examination in the curia. But, if I am not mistaken, this only applies when it is assumed that the judgment of the examiners was simply erroneous. But in this case, Contarini argues that the examiners knowingly intended to reject him; therefore, the reasons presented by him must be examined, so that a prudent and just judgment may be rendered. And in order...

[*Latin ed. p. 145*]

NEAPOLITANA 145. Let us proceed; let us begin with those things which preceded the examination. Therefore, a few days before the examination, a rumor began to spread among the people that the examiners were favoring a certain candidate, who was related to a certain canon by spiritual ties. When this was reported to several people, the Most Reverend Contarini went to the Vicar General to ascertain whether these reports were true. And this was all the more so because Contarini himself, as if compelled by the Curia, had decided to attend the examination, with the promise of obtaining a benefice, while still observing the laws that were to be observed. The Vicar General asserted that the rumor spread by the enemies of the Most Reverend Contarini was false, and he considered that the promise already made should be confirmed again. In the meantime, as the tumors grew, the day arrived for the examination that had been scheduled. The candidates were present, the solutions to the cases were completed, and the written exercises were prepared. And while these, according to the custom of the place, are usually presented with the name of the candidate affixed, it was required for this occasion that the signature be visible to all. Moreover, while the solutions and written exercises of the other candidates were found to be signed by each of the examiners, as required by law, the solutions and written exercises of the Most Reverend Contarini bore no signatures from the examiners. After this, the examination of the written exercises began; and after reading the solutions presented by Contarini, a voice was heard, which exclaimed: "Contarini wrote well!" But immediately, after the written exercises,

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which had been well written, were examined, they were declared invalid. The Most Reverend Archbishop opposed this, and the other examiners hesitated; but one of them supported the proposed rejection, even because the written exercises had not been written on the prescribed scriptural text. This seemed to be a new thing, and one that had never been put into practice. But at the same time, a new law was established, which was to take effect from that very day. All of these things, although asserted by only one person against Contarini; yet with the Most Reverend Archbishop silent, and the Pro-Synodal examiners silent, appeared so grave that they at least gave rise to the suspicion that the examiners had knowingly intended to exclude Contarini from receiving the benefice. Acts, Vol. XXII, page 255, line 10.

[*Latin ed. p. 146*]

14G. In Naples, unless the contrary is proven, the justice of the sacred Canons demands that the benefit be granted to Mr. Contarini in the name of the Holy See, without any other burdensome condition. However, if, considering the circumstances of the time, and having taken into account the Most Reverend Decree which the Reverend Father Adamus Oriente cited, this Holy Congregation were to judge that another remedy should be applied, then either We would propose that Mr. Contarini be provided for equivalently by the Most Reverend and Most Reverend Archbishop, without imposing any further burden or requirement upon him, or We would concur. With the foregoing noted, the following questions were to be considered: I. Whether the judgment of the archiepiscopal court should be confirmed or overturned in this case. And, to the extent that the answer to the first part is negative, the answer to the second part is affirmative. II. How provision should be made in this case. RESOLUTION. The Sacred Congregation, after deliberation on the 4th of May, 1889, decided to respond: No. There is no place for an appeal, and it is the opinion of this Congregation that the examiners have not sufficiently observed the Benedictine constitution concerning the concurrent [candidate]. FROM WHICH WE GATHER: I. According to the mind of the Council of Trent, the examiners ought to renounce those whom they find suitable, after a prior cumulative judgment concerning age, morals, knowledge, prudence, and other requirements necessary for properly governing a particular parish. II. That the composition [of a written work] does not pertain to the essence of the competition is evident from the resolutions of the Sacred Congregation, by which it is clear that it should not be imposed by way of command, but rather by way of instruction, so that each of the candidates writes a composition on a passage from the Gospel. III. Indeed, it is clear from Benedict XIV that the intention of the Holy Congregation is to urge the Bishops, and to propose to them a method that should be followed solely by counsel and persuasion, not absolutely, concerning the composition to

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be prepared on the evangelical text.

[*Latin ed. p. 147*]

NEAPLES IV. Therefore, if a coadjutor is not ordered, but only suggested, this pertains to the form, and not at all to the substance; but those things which pertain to the form do not destroy the substance if they are lacking. V. From the Constitution: Examiners, considering the joint expenses of instruction and other necessities, may remove those who are unfit by a vote, and present suitable candidates to the Bishop. VI. Or, as the same Constitution states, examiners ought to associate with the study of doctrine, a strict bond of morality, gravity, prudence, services rendered to the Church, and all the ornaments of virtue. VII. In the matter under consideration, the examiners appear to have only considered the necessities, neglecting other things which were essentially required by law, and therefore their judgment was false, because the Constitution in question was not sufficiently observed. VIII. It is possible, to the extent that it pleases, for the Apostolic See to excuse a defect in the form, concerning the appeal which must be presented within ten days, if justice has been harmed. IX. In the matter under consideration, it was stated that there was no place for an appeal, perhaps in order to avoid difficulties on the part of the Government, from which another candidate had already been appointed and had taken possession of the parish.

MONTISALTI, COMPOSITION. On May 4, 1889. By summary petition. Marquess Matthaeus Ricci-Petrocchini, with humble petition, states that, by a public instrument of January 18, 1886, he, as patron, redeemed the goods of the collegiate church of Montis Elpari in the diocese of Montisalti, which had already been occupied by the State, commonly called the Demanio, and had been held for a long time. The preceding patron, Amicus Ricci-Petrocchini, had been prepared to do this.

COMPENDIUM OF THE AGREEMENT.

[*Latin ed. p. 148*]

148. MONTISALTI. In this collegiate church, there were originally six canons, and two assistant clergy. Today, six canons have passed away, and only two remain, who are therefore still legally entitled to their life pensions, along with a small additional sum to cover expenses related to the services. Indeed, in the adjudication of the assets, the treasury, acting in favor of the patron, insisted that a suitable guarantee be provided in the public records for the payment of this life pension. The petitioner today humbly requests that these two beneficiaries be allowed to redeem the public revenue bonds that they had previously deposited as collateral for the payment of their respective dues and expenses related to the services; while, in return, he undertakes to assign to the Church of Saint Gregory

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a perpetual income of 250 annual volumes, either through the release of bonds from the lien, or through another method, as approved by the Apostolic See, and this in addition to the pensions owed to the clergy, as long as they remain alive. When asked for his opinion and vote, and to report on all matters pertaining to the case, after having heard both the two beneficiaries, the Bishop responded: "The Collegiate Church of Montis Elpari, about which Marquis Matthew Ricci-Petrocchini spoke in his supplementary prayers, was built by Cardinal Gregory Petrocchini at his own expense, and endowed with six thousand Roman scudi (i.e., 6000). Subsequently, with the addition of donations from other benefactors, who established certain legacies for masses and other religious functions to be performed in the same church, the endowment of the church grew to thirty-seven thousand volumes (L. 37,000)." "The petitioner, to whom the right of patronage over the church belonged, petitioned the government and obtained, at the beginning of the year 1886, the recovery of the entire endowment, which consisted of certain real estate and various Uzes, in exchange for paying a tax of eleven thousand one hundred volumes (L. 11,100), as well as another sum for the interest on that tax for five years. However, if the law imposes this burden on the patron who is reclaiming the endowment,..."

[*Latin ed. p. 149*]

"To the high mountain [Montis Alti], 149. To him [the patron] was also granted the right to collect all fruits from the entire endowment of the Collegiate Church from the day of its suppression, except for those which could not be denied to those canons and beneficed persons still living, who were entitled to them as a pension, and those which were to be spent for the divine worship within the Church. Indeed, over so many passing years, many of these individuals have died, and therefore those fruits have increased for the patron day by day; so that, perhaps, I would not err greatly if I were to affirm that the sum which the patron ought to have received back from the government equaled, or even surpassed, the sum which the patron was compelled to pay to the government for taxes and interest.

"Because, as long as even one of those clerics who were in some way devoted to the service of the Church remains, the divine worship therein cannot be omitted, nor can the annual stipend be denied to those persons, according to the disposition of the law; therefore, restoring the free ownership of the goods of the Collegiate Church, the government ordered that a sufficient number of bonds of obligation, commonly called 'cartelle del debito pubblico' [public debt certificates], be deposited with it, both for the payment of the pensions of those beneficed persons still living, and for the payment of the expenses necessary for the exercise of divine worship. These bonds of obligation will revert to free and valid possession upon the death of all the beneficed persons. However, the patron wishes to recover them at the present time, by subjecting himself to the burden of paying

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the same pensions, and the same sum established by the government for the expenses of divine worship. He therefore requests the consent of the beneficed persons. Those who were questioned by me regarding this matter replied that they would gladly agree to the patron's request, on the condition that he offer a legally valid guarantee, with the appropriate conditions, both for the payment of the pensions and for the payment of the sum for the expenses of divine worship."

"The patron has leased the good immovable property for an annual sum of one thousand seven hundred and eighty pounds, L. 1780, and from the fruits of the rents, he receives four hundred and twenty-five pounds, L. 425. Thus, the annual income which he effectively..."

[*Latin ed. p. 150*]

"The mountain [Montis Alti] yields, it is said, a sum of two thousand two hundred and five florins, amounting to 2205 florins." "The Most Reverend Cardinal Founder established that from the fruits of these six thousand florins, or sixty talents, forty talents should be spent on the maintenance of the Church building and the provision of furnishings, and the remainder should be distributed among six canons and two clerics, whom he himself appointed for the celebration of divine offices, and for the care and administration of the Church. However, in addition to these, he imposed upon them the obligation of celebrating eight hundred and eighty-four Masses each year, which, with the passage of time, were reduced by an Apostolic Indult to five hundred and sixty-one. " "In addition to these obligations, there were others instituted by subsequent benefactors, namely, the annual celebration of thirty-eight other Masses, and the celebration of the function of the month of May in honor of the Blessed Virgin, as well as the functions of the so-called twelve Saturdays preceding the feast day of St. Francis of Paula." "The petitioner for the composition offers, in his prayers, an annual income of two hundred and fifty florins; a sum which, as he states, he can, if this Holy Congregation so orders, increase up to three hundred and sixty florins, and he asserts that he is a suitable guarantor for the fulfillment of this obligation. However, he wishes to begin such a payment only after the death of the beneficiary, that is, when the obligation to pay the sum assigned by the administration for their pension ceases, and then another sum is assigned to the Church for divine worship." "The pension assigned to one of the aforementioned clerics amounts to two hundred and seventy-three florins; the sum assigned to the other amounts to two hundred and forty-six florins; and the sum established for the expenses of worship does not exceed one hundred and ninety florins." "Indeed, the annual income of two hundred and fifty florins..."

[*Latin ed. p. 151*]

"The sum of 15,000 gold florins, or at most 160,000, seems insignificant,

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considering the value of the acquired endowment, and the condition that the sum not be paid until after the death of the current beneficiaries is also unfavorable to the Collegiate Church, especially since one of them is still alive at the age of sixty-three, and the other at forty-seven. However, I know the petitioner wishes to subordinate the proposed agreement to these conditions, so that if he is forced to pay a larger sum than the one mentioned, or even the same sum, while the beneficiaries are still alive, he will instead send word to anyone who might offer a better arrangement; which would certainly be detrimental to his soul, but also to the Collegiate Church. " *Synoptic Discussion.* "It is truly deplorable to hear of this disposition of mind in the Marquis of Ricci-Petrocchini, and it is most regrettable that a Christian man should seek to retain what rightfully belongs to the Church, and that this has only come into his possession through force and injustice. Furthermore, if this indulgence is granted, while he quietly claims 2,000 florins annually, the Collegiate Church will cease to exist, the obligations of Masses and pious supplications will not be fulfilled, the proper funds for the expenses of worship and the fabric will be lacking, and finally, by yielding to violence and wickedness, a dangerous and harmful example will be given to others who unjustly hold Church property. However, if, despite this evident injury and injustice, it is nevertheless deemed advisable, for the sake of avoiding further damage to the soul, albeit of a person deserving of caution, and to preserve at least a portion of the Church's assets, to accept the agreement, or at least to reduce it to more equitable terms, then the Most Eminent and Reverend Fathers must decide. With the foregoing in mind, the question was raised as to how the petitions should be addressed. RESOLUTION. "The Sacred Congregation of the Council, having considered the matter on May 4, 1889, decided to respond: 'Negatively.'"

[*Latin ed. p. 152*]

152 Regarding the Fatal Term: Following up on the matter. On May 4, 1889. Session 22, chapter 7, concerning reforms. The following question was proposed on December 7, 1887, under the form of a doubt: Can a judge limit the fatal term to two months for pursuing an appeal in a case? To this, the Most Eminent and Reverend Fathers responded: Nothing should be altered in the disposition of common law (1). However, the Ordinary who then administered that diocese, upon learning this response, considered that: I had not been sufficiently clear in the exposition of the facts; which I now strive to make clear. It is not unknown to me that laws establish different terms for appeals, but I have not sufficiently demonstrated that, in Malta, the provisions of the law regarding these terms have never been observed, and that a custom has arisen, very different from them. And in truth, the losing party, generally speaking, presents the appeal within ten days; but after that, nothing else happens, except in very rare cases

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in which the judgment is truly pursued. Sometimes, my predecessors in the administration of this diocese have considered that the appellant, if negligent, does not lose the right to pursue the appeal before a year from the date the appeal was filed. I have inquired into the origin of this custom, by which judgments are rendered in Malta, and I have found nothing other than its antiquity. Nothing has been altered by me through this custom, and nothing will be altered, until it is known to me what the opinion of the Learned Judges is regarding such a custom, which, being well known to all, it is not unreasonable to believe that it is based on some ancient and particular statute, when indeed, the COMPENDIUM OF THE FACTS is difficult to obtain. (1) This question was reported in Volume XX, page 518.

[*Latin ed. p. 153*]

Formerly, communication with Rome existed from the year 153, which is now very different. Furthermore, the Bishop added, "I do not believe that justice is harmed if I decree that anyone who wishes to offer an impediment must first deposit with the Chancellor the sum of money that is sufficient to cover the expenses of the proceedings." In this way, those who are not supported by good law, or who are moved by a desire for revenge, will more easily refrain from making this objection.

A Synoptic Discussion: Moreover, according to what was reported on the day of December 17, 1887, much is left to the discretion of the judge in this matter; and therefore, it is within his power to moderate or to exacerbate the fatal consequences of the appeal. It is now clear that we are dealing with a matter of discretion, in which, according to established principles, there is no prescription. Therefore, it is legitimately possible to doubt whether the custom of Malta of postponing these matters for a year constitutes a customary law, or rather a bare fact.

In these circumstances, the E.E.P.P. [Most Reverend Fathers] were asked to define the doubt as to how provision should be made in this case.

RESOLUTION: The Sacred Congregation, after discussing the matter on May 4, 1889, decided to respond: "In the decisions; and in the judgment; that is to say, it is within the power of the Bishop to determine the time, after which, unless the apostolic briefs and documents are requested, the appeal shall be considered abandoned."

FROM WHICH WE GATHER:

I. That, saving the common provision by which thirty days are granted to the appellant to request the briefs, it is within the power of the Bishop to determine the time, after which, unless the briefs are requested, the appeal shall be considered abandoned.

II. Therefore, the Bishop of Malta can set aside the unusual custom in his Diocese and determine a time that is suitable to him, but not less than thirty

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days, within which the appeal shall be considered abandoned, unless the briefs and documents have been requested from his Curia to be presented to the superior judge.

[*Latin ed. p. 154*]

154 FACULTY OF THE SALERNITAN FACULTY TO CELEBRATE TWO MASSES. On May 4, 1889. Through summary petitions. SUMMARY OF THE MATTER. The Prior of the Sodality of the Most Holy Name of God and the Blessed Virgin Mary of the Rosary, located in Fisciano, Archdiocese of Salerno, in a petition presented to His Holiness on July 10, 1888, stated that there was no Mass celebrated in the aforementioned church on feast days, and that it had been and was impossible to find a priest in this diocese who would be suitable to remedy this deficiency; and therefore, he requested that the parish priest of Saint Peter the Apostle be granted the faculty of celebrating a second Mass after the parish Mass, or of delegating someone else to do so, in case the parish priest is hindered by just causes. The Sodality maintained that the Mass was absolutely necessary for its existence; firstly, because without this Mass, the brothers of the Sodality could not gather together, and the prayers for the dead would be lacking; secondly, because many from this parish could not attend Mass, since only one Mass is celebrated, to which not all can attend, given the large number of people. The Bishop, after being consulted for information, reported that the statements were true. Nevertheless, on August 28, 1888, a negative response was given. However, on October 6, the Prior of the aforementioned confraternity presented a second petition to His Holiness; which the Most Reverend Archbishop of Salerno, on December 6, 1888, again highly recommended. SYNOPTIC DISCUSSION. In this matter, it has been noted that the Apostolic See can grant the faculty of celebrating two Masses, provided that very serious reasons are present: namely, when necessity demands it: "as is the case," according to Lucidi, part 1, volume 1, page 438, "when one parish priest is in charge of two parishes, or two very distant populations."

[*Latin ed. p. 155*]

"In SALERNITANA, i, 55, it is stated: 'If there are fifty or fewer parishioners, or if they cannot all gather at the same time to hear Mass, then another priest cannot be found.' Benedict XIV, in the constitution *Declarasti*, citing canon 1 of the Council of Nîmes, states: 'And the words must be carefully observed: Where there is only one priest; and also: There are not two priests in the church.' From these, it is clearly understood that it is not permissible for a parish priest, if another priest is present, to perform two Masses on feast days, so that the people may participate in the sacrifice of the Mass, or if Mass is to be celebrated in two churches that are distant from each other, as cited above in the Council of Lima, or if there is only one church in which Mass is celebrated, and to which the entire population

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cannot gather at the same time, as in the Council of Nîmes." Furthermore, in chapter 3 of the *Decretum*, under the heading *Consuluisti*, the text establishes that each priest should celebrate only one Mass, unless necessity dictates otherwise. The Glossa, adding to the word "necessity," states that utility is also to be considered, and that both are sufficient, so that one priest may celebrate Mass twice in a day. This is in accordance with the mind of Benedict XIV, who, in the aforementioned constitution, noted: "that in this, the cause of utility is considered with respect to the listener, not the celebrant." Indeed, in these matters, necessity is almost confused with utility: and the true reason for repeating Mass is so that the people, or a part of the people, are not deprived of the spiritual benefits flowing from the holy sacrifice, and are not prevented from the principal act of sanctification on feast days. However, where there is only one priest and a large population, it is difficult, indeed morally impossible, for all to gather at the same time to hear the Mass, as Pasqualinus rightly notes in *De Mis. sacrif.*, question 844, number 11: and the Holy See has granted the faculty of celebrating two Masses to remove this difficulty, as in *Monasterien*, June 11, 1845. However, it is established that there is only one priest in the place called Fisciano, and also a faithful population that..."

[*Latin ed. p. 156*]

In SALERNO, it is possible for the brethren to assemble at the same hour to hear the Divine Office. With these premises, the question was raised as to how the prayers should be distributed. RESOLUTION. After consideration by the Sacred Congregation of the Council, on May 4, 1889, it was decided to respond: For the purpose of distributing [the prayers], as long as the present circumstances endure. FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS OF ANAGNA, regarding the REVENUES OF THE CHAPTER, dated August 12, 1887. The illustrious Cathedral Church of Anagna originally had 26 canons who participated in the common Mass, whose revenues, because these were true daily distributions, were divided in proportion to their service among the 24 canons and the Provisor, who enjoyed a double canonical provision. Matters were arranged in this manner until the pontificate of Pope Urban VIII, who governed the Church from the year 1623 to 1644. However, under this Pope, things were somewhat changed, and by Apostolic decree, it was prescribed that the revenues from four canonical positions should be allocated to the establishment of eight benefices, according to the regulations contained in Chapter XI of the Chapter Constitutions, in which the obligations are described that the new beneficiaries must fulfill. Regarding the distributions, it is prescribed: "that" the aforementioned beneficiaries, as established, should receive "all" and "each" distribution, allowances, revenues, and anniversary mortuary offerings, which they would earn and receive.

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SUMMARY OF THE MATTER.

[*Latin ed. p. 157*]

ANAGNINA 157: Quatuor canonicatus sunt supprimendi, et pars eorum inter eosdem, pro rata servitii ab aliquo ex ipsorum prestati, et non aliter. Dicti beneficiarii sustinebunt partem oneri, tam missarum, quam anniversarium, quae ad dictos quatuor canonicatus suppressos iure legatorum a particularibus relictorum, ac alio quovis iure spectarent, et denique contribuunt ad omnes et singulas expensas capitulares, tam pro reparatione Ecclesiae, quam alia quavis occasione pro tempore faciendas, et ad omnia alia onera, tam ordinaria, quam extraordinaria, pro rata quatuor canonicatuum suppressorum.

In vim huiusmodi erectionis, necesse fuit ut annuus massae capitularis reditus in duas massas divideretur, quarum altera 22 portionibus constans, inter 20 canonicos et praepositum, cui duae portiones competebant, subdivideretur: altera vero quatuor portionum inter octo beneficiarios pro rata servitii subdividenda. Ex quo patet canonicos inter se et beneficiarios fuisse reciprocam exclusionem, tam a fallentiis, quam a respectivis quotis vacantibus.

Praeter mox relata, constitutum quoque fuit, ut casu quo a suprema auctoritate ecclesiastica alii canonicatus in posterum supprimerentur, eorum reditus in sacrarii vel Ecclesiae fabricae commodum erogari deberent.

At legibus civilibus contra asse ecclesiasticum promulgatis, et canonicatibus ad tredecim, Praepositus enim duplici praebenda gaudet, Beneficiatis vero ad sex imminutis; bona omnia massae capitularis, sicut antea, in duos cúmulos distributa fuerunt, quorum unus 22 portionibus, alter vero 4 constans, dividebantur pro rata servitii inter canonicos et beneficiarios praesentes in choro, quin contra huiusmodi divisionem per 12 annos observatam aliquid obmussitatum fuerit.

Verumtamen vertente Augusto 1885, nonnulli ex beneficiariis Episcopum adiverunt, edicentes, memoratam divisionis rationem amplius observari non posse, ex eo quod reditus imminutus fuerat, canonici ad 13, beneficiati vero ad 6 redacti. Hinc reditus quotas inter 16 dividendas esse; nempe 13 inter canonicos, 3 vero inter beneficiarios; quippe qui,

[*Latin ed. p. 158*]

153 ANAGNINA. According to the established regulations, the Canons were to receive half of the income due to them. Striving to compose a just and equitable arrangement regarding this matter, the Chapter presented several proposals, which, however, did not satisfy the Beneficiaries. With all hope of reconciliation lost, the Bishop issued a decree on January 14, 1887, which stipulated the following: "1. There shall be one communal mass, which shall be attended by both the Rector and the Canons, as well as the Beneficiaries. The income from this mass, free from any deductions,

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shall be divided among 16 recipients from the day on which the number of participants was reduced. 2. Any benefit or detriment that the mass has experienced as a result of governmental actions shall be borne by all participants, in proportion to their participation. 3. The ordinary or extraordinary distributions, which remain intact, because they are exempt from the laws concerning property, shall be divided into 26 portions, so that each party may have the right to increase its share of the roof. 4. There shall be no compensation for damages, which the Beneficiaries suffered during the liquidation of the legacies of Spinelli and Lancati, which constituted a small portion of their income; nor shall there be any payment from the Chapter's alms for masses, which were celebrated for two suppressed Beneficiates. 5. The communal mass shall be restored to the Beneficiaries to the extent that they lost income due to the legacies of Spinelli and Lancati, during the liquidation carried out by the *Fondo-culto*."

Soon after, the first article of the aforementioned decree did not please the Canons; therefore, they brought the controversy before the Sacred Congregation for Eastern Churches and the Regular Canons.

A Synopsis of the Arguments:

ARGUMENTS ADVANCED BY THE CANONS.

The Canons, before addressing the merits of the case, point out that they are subject to a division of the income from October 27, 1873, which was converted into a consolidated sum according to the liquidation carried out by the government, which deducted 30 for every 100 livres. Furthermore, they observe that they are not to be excluded from the quotas of the suppressed canonries.

[*Latin ed. p. 159*]

Having made a calculation of the total assets, they deducted nine shares from the total number of canons, and two shares from the total number of beneficed individuals. To these deductions, they added that neither group would receive ten precise twentieths of the total, namely nine from the first group and one from the second; but they asserted that from each canon, lib. 1543.96 would be deducted, as much as the administration had determined; and from the two benefices considered together, lib. 1690.30 would be deducted, corresponding to the small sums resulting from the liquidation of the legacies of Spinelli and Lancati, which pertain exclusively to the benefices, and also lib. 4126 of the chapter's capital, reformed by the chapter. Finally, the canons declared that they would divide the total mass or income into 26 portions, as it was before the suppression of the nine canons and two benefices; and of the 22 twentieths of the total, they would allocate nine shares to the administration, deducting lib. 537.66 for the suppressed canons; and of the four twentieths pertaining to the benefices, they would

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allocate two shares, deducting lib. 86.60 for the suppressed benefices. Thus, the eleven canons remaining with the Provost receive less than would be due to them if the entire 22 twentieths of the total, after deducting ten twentieths, were divided among them, as the Bishop's decree stipulates. Conversely, the six beneficed individuals, if they were to divide among themselves the four twentieths of the original total, after deducting the portions due to the administration, would receive much more than if they were allocated the four twentieths of the total, after deducting ten twentieths. With these premises established, they observed that the concept of the mass of daily distributions is entirely different from the concept of the shares of the mass. Hence, the income of the mass is indivisible; therefore, all participants have the right to benefit from their own portion, and any increase or decrease in the income benefits or harms the participating individuals. On the contrary, the shares of the mass are portions of the mass of income, divided into so many parts in proportion to the service rendered: hence, any loss or gain affects the shares proportionally.

[*Latin ed. p. 160*]

160 At Anagnina, concerning which matters are presented, these should only affect those to whom the shares pertain, just as the restoration of damages benefits those to whom the shares belong. Indeed, assuming that the mass of distributions constitutes the endowment of 22 canonries and 8 choral benefices, under this condition that to each canonry belongs a twentieth part of the entire revenue, free from expenses, and to the eight benefices belong four twentieths; it follows that any increase or decrease in the revenue of the undivided mass should be common to the Canons and Beneficiaries, in proportion to the shares that belong to them; and any damage whatsoever, caused to the mass by vacant shares, which, by a fiction of law, are truly separated from the mass, should only be felt by those to whom those shares accrue during the time of the vacancy. Therefore, if the shares of vacant canonries experience less damage than the shares of vacant benefices, this benefit should be ceded to the surviving canons, and conversely; since the shares cannot be predicted beforehand, since they depend on the greater or lesser service of each individual. With these premises, the Canons attempt to refute the reasons on which the decree issued by the Bishop is based. And with regard to the first point, they state that they have never asserted that two distinct masses exist between the Canons and Beneficiaries; but rather that, after its erection, the mass of the chapter remained the common patrimony of the Canons and Beneficiaries, of whose revenues four twentieths are to be divided for the Benefices and twenty-two for the Canons. And from this, they conclude that any damage or benefit that accrues to the shares cannot be common to the Beneficiaries and Canons, but must belong exclusively to those to whom those shares pertain during the time of the vacancy. With regard to the other reasons

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of the decree, the Canons assert that it is false that the administration has appropriated to itself ten twentieths of the mass, namely, a twentieth part for two benefices and nine for the canonries, when in fact it has declared the sum of 537.66 livres.

[*Latin ed. p. 161*]

ANAGNINA 161. Hence, they contend that it is absurd to claim, as is alleged on the contrary, that half of the revenue of each benefice belongs to each canon, which each canon receives. For the civil law of suppression affected only the divided mass, or that which, by a fiction of law, was retained as such; therefore, it touched only the shares of the suppressed canonries or benefices. Finally, to demonstrate the justice of the distribution, which is established in this chapter, the canons add that, in accordance with the law of suppression, the sum paid to the government must be deducted from the undivided mass, namely, the value of two benefices from the quarter shares of the beneficiaries, and the value of nine canonries from the twenty-two shares of the canons. Therefore, with regard to what remains after deducting from the mass the portions that the government has appropriated, the surviving beneficiaries should receive nothing other than the residue of the quarter shares, after deducting the value of the two benefices that have already been suppressed; nor should it be understood otherwise with regard to the canonries, from which the value of the nine suppressed canonries must likewise be deducted. Furthermore, in order that this may be achieved, it is necessary that the revenue of the mass be divided into 26 shares, of which four-twelfths are assigned to the beneficiaries, and twenty-two to the canons, deducting from the shares of the canons the sum of the nine suppressed canonries; and deducting from the shares of the beneficiaries the sum of the value of the two suppressed benefices. The canons argue that, with such revenues divided, what remains should be distributed in proportion to the service rendered among the canons and beneficiaries.

THE ARGUMENT OF THE BENEFICIARIES. The beneficiaries, on the other hand, maintain that there is only one common mass of the chapter, and that it is common to both themselves and the canons, because the essence of a common mass consists in a real conjunction, which exists when the very fund is divided only in thought. Such a common mass existed before the erection of the benefices, and such a common mass has remained after the erection. Since six beneficiaries have a proper income, which consists of the Spinelli endowment and other small legacies from masses, as recorded in the Acts, volume XXII, section CCLV, 11.

[*Latin ed. p. 162*]

162. The common fund is distinct. It cannot be asserted, based on the fact that there is a right to increase [revenue] among them, that the chapter's

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mass must be divided into two: namely, a mass for the canons and a separate mass for the beneficiaries. Such principles are refuted by examples, and especially by the greater revenues of the chapter's mass, which accrue to the benefit of the common fund, so that it cannot be said that there are two masses. This is confirmed by the fact that the lands of the chapter's mass have always remained undivided, and the benefit derived from them has been a common good for both canons and beneficiaries from time immemorial. From this, they conclude that any increase, whether relative or absolute, derived from the chapter's fund, as has been the practice in the past, should be common to both. Furthermore, they state that many errors, partly voluntary and partly involuntary, have occurred in the agreements made by the chapter with the demesne [estate], some of which have resulted in loss, while others have resulted in benefit. And from this, they claim that in the total revenue of 68,071.52, revenues reserved exclusively for masses, legacies, and beneficences were included, which were therefore not subject to the tax of 30 florins per hundred, and should not have been added to the chapter's revenue. From this, the government subsequently established quotas for the suppressed canonries and beneficences, appropriating to itself, in addition to the tax of 30 florins per hundred, ten twentieths of the remaining sum, which was the property of the legacies. Moreover, they state that before the quotas for the canons and beneficiaries were established, so that nine of them and four of them would be assigned to the government, in addition to the charges for masses, certain other sums had to be deducted for the upkeep of the church, for works of charity or beneficence, for administrative functions, and for the repair of the church. Since this was not done, they claim that the fault lies with the canons, resulting in the government appropriating 2216.46 florins, instead of the 1690.30 florins that should have been appropriated, and that the sum of charges for masses was increased from 2300 florins to 4257 florins.

[*Latin ed. p. 163*]

ANAGNINA 103. Since, according to the opinion of the beneficiaries, there is no doubt that the chapter mass has benefited from the assignment made by the government, it follows that this benefit must be divided among all the canons. Furthermore, the beneficiaries receive nothing from this benefit, since only the four canons are assigned twenty-fourths of it. Therefore, in order that some benefit may also accrue to them, it is necessary that the division be made among the sixteen canons. In this case, the beneficiaries would receive something from the benefit, since three of the canons are represented by the six beneficiaries. They also attempt to demonstrate this with the very institution of the beneficiaries; each of whom should receive half of what each canon receives; and they contend that this is confirmed by the fact that, in no way, should civil law suppress the Church; the division of ecclesiastical goods must be made

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according to the decree promulgated by the Sacred Congregation of the Council on February 2, 1876; or as if ecclesiastical goods were not subject to any change. Therefore, having considered these points for both sides, the following question was proposed: Whether and how one should proceed or recede from the Bishop's decree in this case.

RESOLUTION. The Sacred Congregation of Bishops and Regulars, after deliberation, decided on August 12, 1887, to respond as follows: The decree, in the part appealed by the Chapter, is to be confirmed, according to the terms; namely, from the date of the commencement of the dispute, regarding the division.

CONTINUATION OF THE CASE. The canons maintain that the sum of 537.66 livres, which the government had neglected to assign to them in the suppression of nine canonries, belongs solely to the surviving canons, or to the canons and beneficiaries in proportion to their participation in the chapter mass, and that before the mass is divided among the 16, 537.66 livres should be separated from it each year, and distributed among the surviving canons alone, for the following reasons: 1. Because, according to canon law, the revenue...

[*Latin ed. p. 164*]

164. Furthermore, there were nine canonries, which the government seized upon the death of those who had been invested in them, and, through constantly observed capitular constitutions, the revenues of vacant canonries belonged exclusively to the canons, just as the revenues of vacant benefices belong solely to the beneficiaries in proportion to their service. From this, they argue that the reasoning used to justify the Bishop's decree is false, namely that canons and beneficiaries suffered a common loss from the suppression of nine canonries and two benefices. Indeed, they say, if the government had not fallen into error when it came to the new allocation of the canonries, it would certainly have known that the sum of 537.66 livres constituted part of said canonries. With this established, they maintain that 537.66 livres should be deducted in their favor before the sum of 16 is divided; and this all the more because, in customary times, the aforementioned sum would have been divided among the canons who provided the service. Furthermore, they state that from the common fund, at least 100 livres should be deducted for each suppressed canonry, and 50 livres for each of the two benefices, and that this sum should be distributed among the surviving canons and beneficiaries, as compensation for the greater burdens with which they were burdened due to the suppression of such canonries and benefices; but they relinquish this compensation, provided that the aforementioned sum of 537.66 livres is granted to them. After these points, they proceed to refute the arguments presented by the opposing side; and first of all, they observe that it is not in accordance with the truth that there is only

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one common fund; and for their part, they maintain that, before the law of suppression, the revenues derived from the chapter fund were always distributed exclusively among the canons. The existence of two chapter funds is admitted by the beneficiaries themselves, as they retain the damage derived from the suppression of two benefices, which is not common to both parties, but belongs exclusively to the beneficiaries. Furthermore, it is false that the government has [deducted] 68571.52 livres...

[*Latin ed. p. 165*]

AN AGNIN A 165, quae communi divisioni subiacent, expensas haud subtraxerit duorum beneficiorum suppressorum. Et consequenter, alienum a veritate esse, quod in summa dividenda, ex qua suppressarum praebendarum quotas gubernium excerpserat, reditus beneficentiae seu dotes, reditus legatorum missarum, taxa lib. 30 pro singulis 100, et cultus expensae comprehensae fuerint. Utilitatis vero, quam ex detractione eleemosynae missarum et cultus expensarum canonici retulerunt, beneficiatus quoque participes fuisse; idque ex rationum redditione, penes Curiam episcopalem existente, manifestum fieri. Tandem veritati haud conforme esse ab adversariis obiectum, nempe beneficiatis medietatem reditus competere, qui canonicis debetur. Hoc siquidem ut contingere posset, necesse foret, ut quilibet beneficiatus medietatem lib. 40 solveret, quas singuli canonici persolverunt pro taxa, quam concursus quotam appellant. In hac hypothesi beneficiati actuales persolvere deberent plusquam persiperent, si ad participationem lib. 537,66 pro tribus ex sedecim portionibus admitterentur. Ultimo denique loco canonici pro se invocant iuris principium die 26 Februarii 1876 a S. C. C. constitutum, quod scilicet reditus dividi debent, perinde ac si nulla innovatio contigisset. Porro cum in facto sit, quod ante civilem suppressionis legem massa capitularis in 26 portionibus dividebatur: sponte fluit huiusmodi dividendi rationem etiam post praedictam suppressionis legem adhiberi oportere; ita ut 22 ex citatis portionibus canonicis, 4 vero beneficiatis tribui debeant. Hisce ex canonicorum parte denuo perpensis, propositum fuit diluendum suetum Dubium An et quomodo recedendum sit a decisis die 12 Augusti anni 1887 in casu.

RESOLUTIO. Sacra Congregatio die 16 Martii 1888 respondere censuit: In decisis iuxta modum. Modus est:

[*Latin ed. p. 166*]

166. Regarding the *agnina* [a fixed annual sum], just as the canons in book 537, section 66, are obligated to provide benefits, so too are the beneficiaries obligated to provide fruits [benefits], which they enjoy as long as they hold the benefit. Having considered this resolution, the beneficiaries, believing that their rights had been violated, presented a new appeal

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to the Holy Congregation, requesting the suppression of the clause. They argued that it concerned a matter that was not relevant to the question at hand, and that it contained additions beyond what had been requested. To demonstrate this, they pointed out that the government had maintained that the total amount consisted of certain divisions: that some of the benefits were constituted from the aforementioned revenues and were therefore excessive; while others, belonging to the canons, were also excessive because they were exempt from any expense derived from the total amount, and that this had led to an error in book 537, section 66. From this, they concluded that the sum in book 537, section 66, did not originate from any fund belonging solely to the canons, but rather from a common fund that belonged to both the canons and the beneficiaries, both according to ecclesiastical law and in accordance with the provisions of the capitular constitutions. They argued that this sum, being a part of the suppressed canons' quotas, could not be considered invalid, while at the same time, a legitimate distribution carried out by civil authority must be admitted, and that it had the right to be converted into stipends, which, according to ecclesiastical law, was a right belonging to the common fund. With these premises established, they argued that 1. the equality between the sum in book 537, section 66, and the benefit of Salvator could not be admitted. The sum in book 537, section 66, was a part of the common capitular fund, which the government could not divide and distribute between the canons and the beneficiaries. The benefit of Salvator, being one of the six that were preserved, belonged to the subordinate fund, and therefore, the right to increase it belonged only to the beneficiaries, just as the canons unjustly deprived themselves of certain benefits derived from their own subordinate fund. Secondly, they argued that it was false that, on the contrary, the exclusive division of the benefit of Salvator was demonstrated.

[*Latin ed. p. 167*]

ANAGNINA 167 states that there is no common mass. This is because it demonstrates that the mass, mediated by *m*, and the preceding service are indeed common; however, it is not the case that there are two subordinate masses immediately following the performed service. And they affirm that this has been the practice since before the year 1873, when the Chapter possessed the funds. At that time, the revenues and losses that occurred during the year were common to the canons and the benefice; however, the fruits derived from such funds were customarily divided into 26 equal parts, of which four portions were assigned to the benefice, so that, through their favor, they would appear to be subdivided again. Thirdly, they observe that it makes no difference whether the benefice is from funds that have been preserved or from those that have been suppressed. Since the money paid by the government, being compensation for the old funds, takes on the nature of a common mass, and therefore, without regard to

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the repairs made by the government, it must be divided according to the norms of ecclesiastical law, namely 13 parts for the canons and 6 parts for the benefice; but in such a way that, after the service has been performed, it must be subdivided again between the two orders. From this, they argue that the benefice of Salvatori, if it were from suppressed funds, would constitute a part of the common mass, or *summa*; if, on the other hand, it were from preserved funds, it would belong to a special mass, which is the property of the benefice holders. The dilemma of the canons in the thesis cannot be considered, because the benefice of Salvatori takes on the nature of a benefice, the defects of which are constantly related to the benefice; on the contrary, the *summa* forms 537.66 parts of the common mass. Furthermore, they say that no consideration should be given to the perspective of liquidation made by the government, in which the *summa* paid by it appears as a portion of one of the suppressed canons; indeed, the civil authority's action should not be considered, but the laws of the Church should be followed. Furthermore, it is not the case that the benefice of Salvatori sent a notice of a benefice; since it is clear from all the documents that the aforementioned benefice, being vacant, does not exist.

[*Latin ed. p. 168*]

168 The canons of Anagni, even when presented with the opposing viewpoint, maintain that it is without merit; for, when it is a question of a benefit derived from the endowment, the income from which, according to the current Capitular Constitutions, exclusively belongs to the beneficiaries, the argument gains no traction. Therefore, to avoid disputes and arbitrary interpretations, the beneficiaries request that the Holy Congregation deign to define and distinguish the sums that constitute the common fund from those that form a special fund. On their part, the canons, presenting what they have previously stated, argue: 1. That it is contrary to truth to assert that each beneficiary should enjoy half of the income that each canon enjoys, when it has been demonstrated that each beneficiary, in addition to the income from their own benefice, also benefits from those who receive income from the benefice of the Savior. Indeed, it is contrary to truth to assert that the income of the capitular fund should be common to the canons and the beneficiaries; for it is clear that the benefice of the Savior has been permanently assigned solely to the beneficiaries since the year 1873. Furthermore, it is false to assert that the capitular fund constitutes a common fund for the cathedral; for it is evident that a portion of this fund, a specific quota, is constituted exclusively by contributions from certain of the participants. Secondly, the canons assert that the benefice of the Savior cannot provide a sufficient reason for the reform of March 16, 1888; although in that resolution, it is assumed that the said benefice belongs to the number of benefices suppressed. They affirm that the reason for which the Holy Congregation deemed it appropriate to issue such a resolution

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was because it maintained that the capitular fund was a common fund, and that the income from the benefice of the Savior, as well as the sum of 537.66 florins, pertaining to the nine suppressed canonries, came from this fund. From this, they argue that such a reason would hold true whether the said benefice is considered to have been preserved or not. Thirdly, the canons maintain that it is unjust to reform the decision only to the extent that the beneficiaries are harmed, and to prevent its being corrected to the extent that the canons believe they have been harmed. From this, they use the following argument:

[*Latin ed. p. 169*]

ANAGNINA 169: The question arises whether the mass is a capitular mass or a common mass, or neither. If it is a common mass, then both the sum of 357.66 livres, as well as the revenue of the benefice of Salvatori, which should belong to both the canons and the benefice, must come from the same common fund; and therefore, the aforementioned decision could not, in any way, be revoked. Or, the mass is not a common mass, and in this hypothesis, just as the revenue of the benefice of Salvatori should belong solely to the benefice, so too should the sum of 537.66 livres, being the revenue of the suppressed canonries, belong solely to the canons; and therefore, there would be a deficiency in the reasoning, both with regard to the portion pertaining to the benefice, and with regard to the portion pertaining to the canons. It could not be objected that the nature of a common mass does not contradict the fact that certain quotas pertain to some, excluding others, by law; and therefore, it is not absurd that in the Cathedral of Anagnina there is a common mass, even though the revenue of the benefice of Salvatori belongs, by law, solely to the benefice, to the increase of which it is entitled, regarding the quotas of the mass, which constitute the benefice. Indeed, objections may arise, but it should be noted that this type of argument also favors the canons; since they also, by virtue of the capitular constitutions, have the right to increase the quotas of the mass, which constitute the canonries, to which 537.66 livres should be assigned, which is the subject of the question. After these considerations have been presented to the examination of the Fathers, the following question was proposed: Whether the decision of March 10, 1888, regarding the manner in which the benefice of Salvatori is to be treated in this case, should be confirmed or rejected. RESOLUTION. After all these things have been thoroughly considered, the Sacred Holy Congregation responded to the aforementioned question on December 21, 1888: It is necessary to retract from the previous decisions, as far as they pertain to the matter at hand, and no further.

[*Latin ed. p. 170*]

170 FROM THE SACRED CONGREGATION FOR THE ORIENTAL

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CHURCH. — DECREE concerning the beatification, or declaration of martyrdom, of Peter Luti, a priest, killed in hatred of the faith. During the violent storm of persecution in the year 1859, in the regions of the Apostolic Vicariate of Western Cochinchina, among the valiant confessors who met a glorious death for Christ, the venerable Servant of God, Peter Luti, a priest, native to that region, stood out. Since he frequently visited Christians detained in the prison of the city of Mitho, in order to console them, he was finally recognized by the persecutors and thrown into prison, and, by a judicial sentence, was condemned to death for confessing the faith, and in the beginning of the year 1861, he was beheaded. He belongs to the group of thirty-four martyrs, for whose cause the Most Holy Pope Leo XIII signed a Commission on February 13, in the year 1879. However, at that time, authentic documents concerning his martyrdom, diligently collected by the Apostolic Vicar at that time, had perished due to the vicissitudes of persecution, so that his name could not be included in the cause introduced that year. Now, the present Apostolic Vicar of Western Cochinchina, moved by the excellent reputation of the holiness of this venerable Servant of God, has properly instituted an ordinary process concerning his martyrdom, and has sent it to the Apostolic See. Therefore, at the request of the Reverend Father Francis Xavier Cazenave, General Procurator of the Seminary of Paris for Missions to Foreign Lands, and Postulator of the cause of the aforementioned venerable Servant of God, the Most Holy Pope benignly granted that the question concerning the signature of the Commission for the introduction of this cause be examined in the same manner, form, and with the same special Sacred Congregation, as was done in the introduction of the cause of the other thirty-four venerable Servants of God, namely, Stephen Theodore Cuénot, Bishop of Metz, and his companions, after a prior explanation to be prepared by the Promotor of the Holy Office. Furthermore, His Holiness desired that this special Congregation consist, by decree of June 8, 1888, of the Cardinals Pitra, Oreglia, from the Order of Saint Stephen, Ledochowski, Parocchi, Schiaffino, and Bianchi, as prefect and relator, together with official prelates. Afterwards, after the venerable Cardinal Pitra was taken from this life, the same Holiness, by decree of April 8 of the following year, substituted the Most Reverend and Most Reverend Lord Cardinal Laurenzi, His Eminence, as Prefect, to be together with Cardinal Bianchi, the relator, and the others.

[*Latin ed. p. 171*]

From the Sacred Congregation of Rites, it was determined that such a cause should be extended to Canons and Official Prelates. Therefore, this particular Congregation was convened, signed, on the day indicated, at the Vatican Palace, and in it, the Most Eminent and Reverend Cardinal Relator proposed the following question: "Should a commission be appointed for

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the introduction of the cause, and to what effect?" Furthermore, the following voted, namely, the Most Eminent and Reverend Cardinals Monaco of Vaux, the Dean of the Sacred College, in place of and on behalf of Cardinal Laurenzi, Prefect of the same Congregation, the Canons, Bianchi, Schiaffino, and Zigliara, in place of and on behalf of Cardinal Ledochowski, as well as the Most Reverend Fathers, the Official Prelates Panici, protonotary, Nussi, secretary, Caprara, Promoter of the Faith, and Persiani, assessor, all of whom expressed the opinion: "A commission should be appointed, if it pleases the Most Holy." On July 9, 1889. The agreements reached regarding these matters were subsequently reported to the Most Holy Lord, our Pope Leo XIII, by the undersigned Secretary, and His Holiness approved the decision of the aforementioned particular Congregation, and deigned to sign the commission for the introduction of the cause of the venerable servant of God, Peter Luu, as mentioned above. On the 24th day of the same month and year.

RAPH. Card. MONACO

L. gtS.

VINO.

NUSSI

S. C. R.

Secretary.

NAMURCEN. – DECREE for the beatification and canonization of the venerable servant of God, Julia Billiart, foundress of the Congregation of the Sisters of the Blessed Virgin Mary. In the waning years of the last century and at the beginning of our own, a most remarkable worker in the vineyard of the Lord, the venerable servant of God, Julia Billiart, flourished, who lived in a humble village, commonly called Cuvilly, in the Diocese of Beauvais. Adorned with outstanding virtues, tested by long illness and hardships, she completed a laborious life with a precious death, which she received in Namur on the octave of April, 1816, and was enriched with heavenly gifts. The fame of the sanctity of this illustrious handmaid of God, which especially persisted in the places where she had lived, after her death, grew wider and more splendidly through the Institute of the Sisters of the Blessed Virgin Mary, of which she herself had been the founder, for the salvation of souls. Indeed, like a good tree, to which God has blessed, it has grown, extending its branches even in distant regions, and has brought forth abundant fruit in the vineyard of the Lord, through the works of the daughters, who, inspired by the spirit of their excellent Mother, and imitating her zeal, dedicate themselves to helping souls.

[*Latin ed. p. 172*]

172 FROM the Sacred Congregation of Rites: Consequently, many faithful, admiring the sanctity of the Servant of God, having used her before

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God as an intercessor, have testified that they have received considerable graces through her intercession. Therefore, in the ecclesiastical court of Namen, a process was instituted with ordinary authority, concerning the reputation of her sanctity, virtues, and miracles, for the purpose of legal proceedings; to which were subsequently added postulatory letters, first from the Most Serene Emperor of Austria, and from the Most Serene Queen of Belgium, and also from numerous Cardinals of the Holy Roman Church, from esteemed prelates, and from other men of both ecclesiastical and civil distinction, and from Religious Societies of both sexes, who clearly confirmed the same reputation of sanctity. Therefore, since the Most Holy Lord, our Pope Leo XIII, had already graciously granted that the matter of the introduction of this Cause be considered by the Congregation of Sacred Rites, without the intervention and vote of Consultors, in an Ordinary Session, although less than a decade had elapsed since the presentation of the informative process in the acts of the aforementioned Sacred Congregation, and the writings of the aforementioned Servant of God had not yet been examined, the Most Eminent and Reverend Cardinal Laurenzi, Prefect of the aforementioned Sacred Congregation and promoter of the aforementioned Cause, at the request of the Reverend Father Raphael, a titular Bishop, postulator of the same Cause, proposed the following question to be discussed in the Ordinary Sessions of the Congregation of Sacred Rites, convened at the Vatican, namely: Whether the Commission for the introduction of the Cause should be signed in this case, and to what effect? The Most Eminent and Reverend Fathers entrusted with the preservation of the sacred rites, after hearing the Reverend Father Augustine Caprara, Promoter of the Holy Office, who presented his opinion both verbally and in writing, judged it necessary to respond: "Affirmative, that is, the Commission should be signed, if it pleases the Most Holy [Pope]." On May 25, 1889. Having faithfully reported all of the above to the Most Holy Lord, our Pope Leo XIII, His Holiness, having approved the decree of the Sacred Congregation, deigned to sign with his own hand the Commission for the introduction of the Cause of the Venerable Servant of God, Julia Billiart, on June 26 of the same year.

RAPHAEL CARDINAL MONACO, VINCENTIUS Nussi, Secretary of the Sacred Congregation.

[*Latin ed. p. 173*]

APPENDIX III. In which are recounted further Decrees of the Congregation of Sacred Rites. ALMERÏA. Certain Canons of the Church of Almerïa, in a response given by the Sacred Congregation of Rites on November 25, 1675, in a case concerning controversies between the Dignitaries on the one hand, and the Canons of the Cathedral Church of Amalphitana on the other, and in another response made on November 22, 1631, concerning

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the Chapter of the Cathedral of Alexandria, having raised doubts, inquired whether they ought or ought not to perform service as Deacons for the Dignitaries solemnly celebrating. Since, in matters of ambiguity in that Church, one must follow what is established in the Metropolitan Church, and according to the consent of the Metropolitan Chapter; therefore, the aforementioned Chapter humbly proposed the following questions to the Sacred Congregation for a suitable declaration: I. Whether the Canons of this Church ought to serve as Deacons for the Dignitaries solemnly celebrating? II. In case of doubt, whether they ought or ought not to serve, whether they proceed correctly in conforming themselves to the consent of the Metropolitan Chapter, according to the erection of this Church. And the Sacred Congregation, having heard the report of the undersigned Secretary, and the opinion of another of the Masters of the Apostolic Ceremonies, judged it fitting to declare as follows: To I. If the canonical benefices are presbyteral, they are not bound, according to the Decree in Amalphitana of November 23, 1672 (1), but if they hold diaconal and subdiaconal benefices, they are bound according to the Decree in Alexandria of November 21, 1631 (2). To II. As provided in the first. But— (1) AMALPHITANA. In a case concerning controversies between the Dignitaries on the one hand and the Canons of the Cathedral Church of Amalphitana on the other, regarding the assistance of one of the aforementioned Canons as a Deacon, pretended by the Dignitaries during solemn celebrations; the Sacred Rites Congregation, referring the matter to the Most Reverend Cardinal Vidono, and being informed by both sides, judged: "Since the canonical benefices are presbyteral, they are not bound to serve as Deacons." And thus it declared. On this day, November 23, 1675. (2) ALEXANDRINA. The Chapter of the Cathedral of Alexandria states, both by virtue of a particular statute, as well as by ancient custom, that the Canons are bound, and obligated, even if they are priests, to serve as Deacons, and Subdeacons, for the older Canons solemnly celebrating; and that the six most recent Canons refuse.

[*Latin ed. p. 174*]

474 APPENDIX, which was declared and recorded in writing as follows: On December 15, 1882, in the United States. The Most Reverend John Severny, the current Bishop of St. John in America, proposed the following questions to the Congregation of Sacred Rites: Question I. Whether a covering for a tomb can be made from any kind of stone, or whether it must be made of marble? Question II. Whether, in the consecration of a new portable altar, the tomb of which is closed with plaster or wax, a foundation of cement must be prepared, as is prescribed for the consecration of a regular altar in the Roman Pontifical, or whether a common foundation is sufficient? And the aforementioned Sacred Congregation, after hearing the opinion of another of the Masters of Sacred Ceremonies, decided to respond as follows: Regarding 1. Affirmative, to the first part, provided

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that it is truly a natural stone; regarding the second part, provision is made in the first. Regarding 2. Adhere to the disposition of the Roman Pontifical. And thus it was recorded and declared. On December 15, 1882. III. RAVENNA. The Master of Sacred Ceremonies of the Metropolitan Church of Ravenna humbly requested a resolution from the Congregation of Sacred Rites regarding the following questions: In some Cathedrals and Collegiate churches, on the feast of St. Mark and on other days of Rogation, a procession of litanies is held, singing the praises of the Saints. After these have been completed, one of the Beneficiaries or Chaplains celebrates a Mass of Rogation, in which the capital cross stands at the side of the Evangelist. After the Mass, the Chapter returns to the Sacristy with the acolytes, without the cross, as on weekdays. The question is: I. Can the capital cross be placed at the side of the Evangelist in the Mass of Rogation which is celebrated by the Beneficiaries or Chaplains, as is done in canonical Masses? II. After the Mass has been celebrated, should the procession to the Sacristy be made with the cross? Furthermore, the Sacred Congregation of Rites, after hearing the report of the undersigned Secretary and the opinion of another of the Masters of Sacred Ceremonies, decided to respond as follows: Regarding 1. Negative, according to custom; these duties should be performed; they were requested to abstain from doing so under pain of penalty. And the Sacred Congregation responded: "That the Deacon and Subdeacon must serve, having their respective diaconal and subdiaconal vestments, notwithstanding any statute or custom to the contrary, which custom has been declared to be an abuse." And thus it was ordered that this be observed in the Cathedral of Alexandria, on November 22, 1631.

[*Latin ed. p. 175*]

175 IX m. at the close of the most holy Patriarchal Archbasilica of the Lateran. To II. Regarding what was stated in the first [section]. And thus it was replied. On January 5, 1883. URGELLEN. The Reverend Joachim Solans, Professor of the Sacred Liturgy at the Seminary of Urgellen, with the consent of his Most Reverend Bishop, humbly proposed the following questions to the Sacred Congregation of Rites for resolution, namely: Question I. Is it customary in churches, especially in parish churches, to carry the Cross, in which the relics of the Holy Cross are contained, from the sacristy to the altar by the celebrant with the ministers, when celebrating the solemn Mass on more solemn feasts? But the practice is not the same in all churches; in some, the relic of the Holy Cross is carried by the Subdeacon preceding, with a numbered veil; in others, by the Deacon; and in others, by the Celebrant. Since the rubrics and decrees do not provide anything regarding this, the following is asked: 1°. In what case should the aforementioned relic of the Holy Cross be carried? 2°. Where should it be placed on the altar, among the candlesticks, or rather, above the altar cloth in the center? 3°. Should it be removed in the case of the Altar Cross? Question II.

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When a Bishop, wearing a pluvial or cope, attends a solemn Mass, should he omit the prayer "Deus qui humanae" and the blessing of the water? Or rather, is the Celebrant obliged to recite the aforementioned prayer, and should the Bishop, when blessing the water, only say "In the name of the Father, and of the Son, and of the Holy Spirit. Amen"? The Sacred Congregation, having heard the report of the undersigned Secretary, replied as follows: Regarding I. The use of carrying the Cross should be eliminated in this case. Regarding II. The custom should be maintained. And thus it was replied and ordered to be observed. On January 27, 1883. CÓRDOBA. The Most Reverend Bishop of Córdoba humbly proposed the following two questions to the Sacred Congregation of Rites for appropriate resolution, namely: I. Can the funeral rites for the deceased be celebrated in the church on more solemn feasts of the first class, while the body is being carried? II. Should the Collect, "Et famulos tuos," which is read at the end of the Missal of the Proper of the Spanish Saints, be said without any variation, even if it immediately precedes the Prayer for the Pope? Or should it be omitted when the Name of the Most Holy [Sacrament] occurs? And the Sacred Congregation, after considering the report of the undersigned Secretary, and after duly deliberating on the proposed questions, decided to reply as follows: Regarding I. No, and such funerals should be transferred to the following day, or to the afternoon hours after the Vespers of the feast.

[*Latin ed. p. 176*]

176 APPEN)ix sacris functionibus non impeditas, abstinendo tamen ab emortuali aeris campani sonitu. Ad I. Negative ad primam partem, Affirmative ad secundam. Atque ita rescripsit. Die 27 Ianuarii 1883. CINCINNATEN. III. rii, audita alterius ex Apostolicarum Caeremoniarum Magistris sententia, propositis Dubiis sic respondendum censuit: Ad I. Negative. Ad II. Negative iuxta Decretum in una Vicariatus Apostolici Bombeyen. Septentrionalis diei 25 Augusti 1882. (1) Atque ita rescripsit. Die 27 Februarii 1883. Rmus D. Gulielmus Henricus Eider Episcopus Avaren. et CoadiuRHEDONEN. tor Rmi Archiepiscopi Cincinnaten. quum nonnulla privilegia ab Apostolica Sede obtinuerit quoad recitationem Divini Officii pro eadem stice divine in Dioecesi Rhedonen. Archidioecesi, insequentia Dubia Sacrae Rituum Congregationi proposita portuna solutione humillime subiecit, nimirum:

I. An in recitatione Officii parvi Beatae Virgine Maria liceat ipsis tantummodo pro Cincinnatensi Archidioecesi quoad recitationem Divini Officii, valere ne possunt etiam pro aliis septem Dioecesibus, pro quibus simul cum ipsa Archidioecesi Ordo Divini Officii recitandi conficitur?

II. An in Choro diebus in quibus celebrantur Festa Duplicia, plicandae sint Antiphonae ad Marecitatinum, Laudes et Vesperas?

Dubium II. Missionarii uno, eo demque tempore septem diversis Ecclesiis uti Rectores stricte addi cti, tenentur ne de singulis earum Titularibus

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celebrare Festa cum Officiis et Missis sub ritu duplicis classis cum Octava iuxta Rubricas?

Sacra eadem Congregatio refeEt Sacra eadem Congregatio rente infrascripto Secretario, post ad relationem infrascripti Secreta- auditam alterius ex Apostolicarum (1) Relata iam fuit huius voluminis pag. 120.

[*Latin ed. p. 177*]

APPENDIX: Concerning the opinion of the Masters of Ceremonies, it is declared as follows: Regarding I. The hymn "Te Deum" in the Little Office of the Blessed Virgin Mary, it ought to be recited, or said, from the Nativity of the Lord until the Seventieth Day, and from the Sunday of the Resurrection until the Advent; but during the Advent, and from the Seventieth Day until Easter, only on the feasts of the Blessed Virgin Mary. Regarding II. Affirmative, if the Office is recited in its entirety, that is, with the three Nocturns; Negative, if only one Nocturn is recited. Regarding III. Affirmative, concerning only the Commemoration of St. Joseph. And thus it was declared and recorded. On February 27, 1883. The solicitude of the Roman Pontiffs, as in other matters pertaining to the sacred Liturgy, also shone forth in this, that they always considered the decorum and uniformity of ecclesiastical gatherings, and especially of the Gregorian chant. Therefore, since, according to the decrees of the Council of Trent, Pope Pius IV had appointed several Cardinals of the Holy Roman Church to the reform of liturgical chant, he devoted all his care to ensuring that such chants be reduced to a more suitable and simpler form, so that they might be easily received and adopted by all those engaged in the work of divine psalmody. In accomplishing this, the diligence and outstanding expertise of Master John Peter Aloysius of Praeneste greatly assisted. He, according to carefully considered rules, perfected the revision of the Roman Gradual, so that it would preserve, at the same time, the proper and genuine characteristics of the Gregorian chant. The Roman Gradual, thus revised and reduced, was subsequently ordered by Pope Paul V to be printed by the Medici press in Rome, and it was approved by Apostolic Letters in the form of a Brief. From that time on, it began to be used in the Papal Chapel, and in the Patriarchal and other important churches of the city. Several disciples of Peter Aloysius of Praeneste, at the command of the Roman Pontiffs, continued the work that he had begun. In our time, when the Most Holy Pope Pius IX observed that the Roman liturgy had been happily adopted in almost all churches, he also had the desire to introduce uniformity regarding liturgical chant. Therefore, through the Sacred Congregation of Rites, he established a special Commission of ecclesiastical men highly skilled in chant, who, under his guidance, auspices, and authority, would again publish the Gradual of the Medici edition of Paul V, and would complete the other parts that were lacking in that chant, according to the standard of the Gradual. Following this intention, the Sacred Congregation of Rites, through circular letters

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published by the aforementioned Commission on January 1, 1868, invited the printers and publishers of liturgical books in the name of the Supreme Pontiff.

[*Latin ed. p. 178*]

178 APPENDIX III. both our own and foreign [scholars], who, with great honor and diligence, published the Apostolic Letters in Lent, dedicated to this work, under the direction of the Most Reverend Fathers, confirming the decrees of the mission and auspices of the Holy Congregation, and setting their hands to that edition of ecclesiastical chants, which, having been thoroughly revised by those appointed by the Holy Congregation of Rites, and having required great diligence and expense, was approved and declared authentic; a certain Frederick Pustet of Ratisbon, a printer of the edition of the Gradual published by the Holy Congregation of Rites, zealously devoted himself to this work, and happily completed it. This Gradual, which concerns all the most Reverend Ordinaries and all those who cultivate sacred music, was so perfectly revised, with mature study and care, by the aforementioned Commission, and was declared so authentic, that it may rightly be called Roman, and approved by the Holy Congregation. His Holiness, Pope Pius IX, on May 3rd of the year 1873, highly praised this edition in his Briefs, and encouraged the most Reverend Ordinaries of all places and dioceses, and all those who are concerned with the cultivation of sacred music, to use it with great zeal, adding an exhortation to the editor, that he should publish whatever remained to be published concerning the Gregorian chant, so that the edition begun by Paul V might finally come to light. And so, the aforementioned printer, with the same zeal and diligence, and according to the established norms, proceeded to publish the Antiphonary and the Psalter, which comprise the Divine Office, and the Most Holy Lord Pope Leo XIII, in his Briefs of 1878, used the same. It is certainly wise to maintain the tradition already established, that all things pertaining to the sacred Liturgy, and especially the chant, should be conducted in the same manner as is used by the Church of Rome.

Meanwhile, more and more cultivators of ecclesiastical music began to inquire more deeply into what was the original method of the Gregorian chant, and what changes had been made to it in various ages. However, having exceeded the limits of this investigation to a greater extent, and perhaps being too enamored of antiquity, they seemed to have neglected the ordinances of the Apostolic See, and the desires of the same, which had been repeatedly expressed for the introduction of uniformity in the Gregorian chant, according to the prudent usage of the Roman Church.

[*Latin ed. p. 179*]

It is also under the pretext that the Apostolic See has declared the chant

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of the edition recently approved by it to be authentic, and has highly commended it, but has not imposed it on individual churches; and they have noted, as is fitting, that the practice of the Supreme Pontiffs has always been to seek to eliminate certain abuses more through persuasion than through commands; and they are well aware that in many places, the words of exhortation of the Supreme Pontiff are interpreted piously and religiously as a mandate. These reasons for deliberation, when spread through periodicals and various published works, called into question the approval of the aforementioned edition, so the Holy Congregation considered it its duty to declare, through Apostolic Letters issued by the Most Holy Pope Pius IX, that the aforementioned edition was authentic, and to reaffirm its approval, by a decree issued on April 14, 1877. Nevertheless, they did not agree with this decree, nor with the subsequent Apostolic Letters of the Most Holy Lord mentioned above; rather, they felt it necessary to further impress their opinions on those gathered at the assembly devoted to ecclesiastical chant, which was held in Arezzo the previous year, much to the displeasure of those who believe that the authority of the Apostolic See, no less than in other matters pertaining to the sacred liturgy, should be followed solely in matters of chant, both in terms of reason and uniformity. However, whatever may have been objectionable in this matter, those who had gathered in Arezzo for this purpose humbly presented certain resolutions or proposals to the Most Holy Pope Leo XIII, seeking his opinion on the matter; the same Most Holy Pope, considering the gravity of the matter, entrusted it to a special assembly of the Sacred Congregation for Rites, chosen by himself, consisting of certain Cardinals entrusted with safeguarding the sacred rites of the Holy Roman Church, and of several officials of the same Sacred Congregation. This special Congregation, assembled at "Vatican" on the date below, after mature and careful consideration, and after reviewing all matters pertaining to the matter, and after also obtaining the opinions of the most learned men, decided, if it pleases the Most Holy Pope, as follows: The resolutions or proposals issued by the assembly in Arezzo the previous year, and offered to the Apostolic See regarding the restoration of Gregorian chant to its ancient tradition, cannot be accepted, approved, or considered valid. For although those devoted to ecclesiastical chant have always had, and will always have, complete freedom to investigate, for the sake of learning, what the ancient form of ecclesiastical chant was, and its various phases, as in the ancient Church,

[*Latin ed. p. 180*]

APPENDIX III. Most learned men have been accustomed to discuss and inquire with great commendation concerning these matters, and regarding the other parts of the sacred Liturgy; nevertheless, they ought to use only that form of Gregorian chant which is considered authentic and legitimate today, which, according to the decrees of the Council of Trent, was ap-

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proved and confirmed by Paul V, Pius IX, and by Our Most Holy Lord Pope Leo XIII, and by the Sacred Congregation of Rites, according to the edition adorned in Ratisbon, because it alone contains that manner of chanting which the Church of Rome uses. Therefore, among those who sincerely obey the authority of the Apostolic See, there should be no doubt, nor further inquiry, concerning this authenticity and legitimacy. In order that the chants used in the sacred Liturgy, strictly speaking, may be uniform everywhere in new editions of Missals, Rituals, and Pontificals, those parts which are indicated by musical notes must conform to the standard of the aforementioned edition approved by the Holy See, because it contains the liturgical chant proper to the Church of Rome, as is stated by the title affixed to the front of each book. Furthermore, although, according to the most prudent method of acting of the Apostolic See, the aforementioned edition is not imposed upon individual Churches, nevertheless, it repeatedly urges all Most Reverend Ordinaries and other cultivators of ecclesiastical chant to adopt it in the sacred Liturgy, in order to maintain uniformity in chant, as many Churches have already commendably done. And thus it was declared on April 10, 1883. After these matters had been faithfully reported to Our Most Holy Lord Pope Leo XIII by the undersigned Secretary, His Holiness approved the Decree of the Sacred Congregation, confirmed it, and ordered it to be made public on the 26th day of the same month and year.

In the Diocese of Engolismen, more than sixty churches are found, formerly parochial, then suppressed, which, although now strictly filial to other parishes, nevertheless serve the convenience of the parish priest and the faithful in the administration of the Sacraments, and in the performance of funerals and other functions. Among these, the Reverend Alexander Leopold Sebaux, the present Bishop of Engolismen, has stated that there exists a parochial church and adjacent territory under the name of St. George the Martyr, of whom it is clear from the testimony of the more prominent inhabitants that he was the patron of the place before the Concordat, and therefore, at that time, people abstained from servile labor and attended the sacred celebration on the feast day of the same Martyr.

[*Latin ed. p. 181*]

[X testify. Hence, the same Reverend Orator proposed the following questions for appropriate resolution, namely: I. Whether Saint George, as patron of the place, ought to be honored and venerated, even though the territory no longer forms a distinct parish, but is united to another parish, considering that the Constitution of His Holiness Pope Pius VII, which mentions the titles of churches, and the subsequent Decree, do not speak of the patrons of places? And, if affirmative, II. Whether the parish priest, who now resides near the present parochial church and not within the territory dedicated to Saint George, and who has already celebrated Mass for the

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people on the feast day of Saint Peter, as patron of the parochial church and the surrounding territory, is obliged to celebrate the second Mass on the feast day of Saint George? III. Whether the same parish priest is obliged to recite the Office of Saint George of the second class with the octave; and, if affirmative, whether he is obliged to observe any translations or changes whatsoever in the Calendar of the Diocese that follow, only when he celebrates in the church of Saint George, or also when he celebrates in the present parochial church? IV. Whether the same parish priest may or ought to transfer the feast of Saint George to the following Sunday, and sing the proper Mass for that saint, in the customary manner, as is done in France for patrons, according to the order of Cardinal Caprara, the legate from the side, and whether he may or ought to sing that Mass only in the church of Saint George, or also in the parochial church? And the Sacred Congregation, having heard the opinion of another of the Masters of the Sacred Ceremonies, after mature deliberation on all matters, considered it fitting to respond to the questions proposed as follows: To I. Affirmative, especially considering the denomination of the town from Saint George, which provides a strong argument for patronage. To II. and III. Affirmative in all respects. To IV. Affirmative in the church of the town now named after Saint George. And thus it responded and wrote. On May 18, 1883. MARIANOPOLITANA. The Reverend Bishop of Marianopolitan humbly requested a resolution from the Sacred Congregation of Rites regarding the following questions, namely: Question. I. In churches where there is no strict obligation of a choir, may the final antiphon of the Blessed Virgin Mary be omitted, or must it be recited? 1. When, during Vespers celebrated before the Most Holy Sacrament exposed, is immediate reposition made, so that the clergy depart? 2. When, after Vespers...

[*Latin ed. p. 182*]

182 Does the brief exposition with the ostensorium or pyxide take place, and does the clergy depart after the blessing and reposition? 3. When does a sermon or procession occur between Vespers and the aforementioned reposition? 4. When, after Vespers, is the tabernacle door closed for private exposition, and is it then closed soon after, without further blessing? And if so, how should Vespers be concluded?

Question II. If, during private recitation, Matins is separated from Lauds, how should Matins be concluded, especially on major feasts, in which prayers are to be added to all Hours with the body bent in reverence? And how should Lauds be begun?

Question III. On the feast of the Annunciation of the Blessed Virgin Mary, which falls within the Lenten season, is it permissible, where there is no obligation for the choir, to sing Vespers of the feast immediately after Mass? And if so, can the celebrant, having removed the stole, put on the maniple, and then the cope over the alb, or must he return to the sacristy, and then

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return wearing the mozzetta and cope?

Question IV. According to the recent apostolic indult granted to the Quebec province, once a year, on the day in each church where, with the consent of the Ordinary, the relics preserved there are exposed, it is permitted to celebrate one Mass with singing in honor of the holy relics, as in Appendix Miss- IX m. of the Roman Missal, except for the two highest classes, on the feast of the Holy Trinity, and also on Sundays, vigilis, and privileged octaves, without prejudice to the conventual or parochial Mass of the day or feast occurring on those days in those churches where the obligation to celebrate the aforementioned parochial or conventual Mass exists, and with the rubrics observed; the following is asked:

1. How many and what kind of relics are required and sufficient to have the right to use this privilege? And to what extent would it be sufficient to expose the relics of saints who are not martyrs, and what color should be used for the vestments at Mass?

2. Since in the Appendices of various editions of the Roman Missal, different Masses are found in honor of the holy relics, should one choose, or at least is it permissible, to use that Mass whose introit begins "Many are the afflictions of the just" with the prayer "Increase," the Epistle "Here is a true saying," and the Gospel "Jesus, when he descended,"?

3. Should the two highest class rite be assigned to the aforementioned Mass, or rather the lower rite?

4. Where neither, by law, nor in fact, is a conventual or parochial Mass celebrated, and another Mass is not sung according to the office of the day, what rule should be followed regarding the commemoration of the office of the day, the singing of the Creed, the Preface on Sundays, and the final Gospel of the Sunday or major feast occurring?

5. Under what name should the churches be designated?

[*Latin ed. p. 183*]

IX. May private chapels also be included? And to what extent? The aforementioned Roman Bishop requests that he be granted the faculty to permit the aforementioned solemnity in chapels, whether public or even within the interiors of pious places, if he judges that this will promote the spiritual good of the faithful and the honor of the Saints. Doubt V. In churches where the obligation of the choir does not exist, the Forty Hours Exposition is carried out by order of the Ordinary, according to the Clementine ordinance; the following is asked: 1. Whether, on the first and third days, if the second Mass has not been sung in accordance with the current Office, any commemorations must be omitted in the votive Mass of the Most Holy Sacrament? Or, rather, is the celebrant obliged to sing, under a distinct conclusion, both the Mass prayer for the day, even if it is for a vigil common to all, about which nothing is done in the double of the first class, or for

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a day within the octave, on a simple feast or a common feria, for which the commemoration has no place in the double of the second class, and then the other special commemorations that would be added in the Mass, e.g., for Sunday throughout the year, for a day within the octave, etc.? 2. Whether, on the second day, when the Mass for Peace or another legitimately assigned votive Mass is duly celebrated, the collection of the Most Holy Sacrament, with the Mass prayer attached under a single conclusion, must be omitted, or not, as has been asked above? 183 3. Whether, if the first or third day should be hindered: A. The commemoration of the Most Holy Sacrament should always be sung after the Mass prayer, under a single conclusion, except on feria V. in the Lord's Supper, on Holy Saturday, and on the feast of the Most Holy Heart? B. Should the following be added, under a distinct conclusion, observing the intrinsic rite of the Mass, all the special and common commemorations that would be made in the same Mass, if it were sung, outside the time of the solemn exposition? 4. Whether, if the second day is also hindered, should the Mass prayer for peace or another legitimately assigned Mass, and the collection of the Most Holy Sacrament, be added? And to what extent? And if affirmative, what place should be assigned to each prayer? 5. Whether on feria IV. of Ashes, if it occurs during one of the three aforementioned expositions, should the feria tone be used in the singing of the Mass prayers, the Preface, and the Our Father? Whether should the prayer for the people be omitted? Doubt VI. Whether the Decree, by virtue of which the proper Masses of Religious cannot be used by external priests in their own churches without a special indult, also includes the proper Masses that, among various dioceses and communities, whether simple or even without any votive intentions, have been added to the Roman Missal by Apostolic benevolence. Furthermore, the Sacred Congregation of Rites...

[*Latin ed. p. 184*]

18i APPENDIX III. Regarding this matter, after a careful consideration of a request made in writing by another, from the Masters of Ceremonies of the Apostolic See, and after a thorough examination of the following report by the undersigned Secretary, the matter has been decided as follows:

I. Regarding the individual parts, it is stated that the final antiphon of the Blessed Virgin Mary is laudably sung at the end of the Vespers.

II. The Matins should be concluded with the Prayer of the Office for the day, and the Lauds should be begun as in the Psalter.

III. It is permissible for the Celebrant to wear a cope over an alb or a stole.

IV. Regarding the first part, a few relics of Saints, even a small number, are sufficient; if there is no relic of the Holy Cross or of a Saint Martyr, the vestment color should be white; regarding the second part, it is affirmative; regarding the third part, the rite of the Lesser Double should be assigned; regarding the fourth part, the rule described in the Rubrics

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should be followed; regarding the fifth part, it is negative; and with regard to the requested extension of the indulgence, it is not to be granted.

V. Regarding the first, second, third, and fourth questions, the Rubrics and the Clementine arrangement should be observed, namely: in the votive Mass of the Most Holy Sacrament for its solemn exposition and reposition, any commemoration and collect are to be omitted. On the days within the Octave of the Most Holy Body of Christ, the Mass will be of the Octave itself, with the proper sequence, and a single prayer without commemorations or collects. On Sundays of the first and second class, on feasts of the same class, on the fourth day of Lent, on the second, third, and fourth days of the Greater Week, from the morning of the fifth day until the morning of Holy Saturday, complete cessation from the aforementioned exposition is required. On all days of the Octave of Easter, Pentecost, and Epiphany, on the Vigils of the Nativity of the Lord and of Pentecost, and also on the proper Octave days of the first class, the Mass of the day should be sung with the Prayer for Peace, under a single conclusion, omitting collects and commemorations. If a feast of the first or second class occurs on a Sunday, then, in the second place, under a distinct conclusion, the commemoration of the Sunday is made, and its Gospel is read at the end. Finally, to the Mass for Peace, the Prayer of the Most Holy Sacrament is added under a single conclusion. However, on the days excepted as mentioned above, the Mass of the day should be sung with the Prayer for Peace under a single conclusion. Regarding the fifth question, the first part is affirmative, and the second part is negative.

VI. Affirmative. And thus it was written, declared, and ordered to be observed.

May 18, 1883.

RAVENNATEN.

Today's Master of Ceremonies of the Most Eminent Archbishop and of the Metropolitan Church of Ravenna.

[*Latin ed. p. 185*]

A certain person, humbly requesting a solution to the following questions from the Most Holy Roman Church, namely:

Question I. By acquired right and the most ancient custom, and also by the Diocesan Synod, paragraph 2, chapter XI, sections II, 22, which confirms and approves the exposition of bodies, which, according to the will of the testator, or of the heirs, takes place in a church not belonging to the parish, two funeral ceremonies are celebrated: First, by the parish priest of the deceased, with the Nocturn and funeral rites without Mass; then, by the rector of the church where the exposition takes place, with the Nocturn Mass and funeral rites. Therefore, it is asked whether the prayer "Oremus pro anima ejus" (Let us pray for the soul of the deceased) should be recited

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in both funeral ceremonies?

Question II. And if the answer is negative, in which funeral ceremonies should it be recited?

Question III. Must the Bishop take the maniple before the words "Deus tu conversus" (O God, turn thy face towards us), as in other Masses of the feast, or of the living; or rather, before the pectoral cross, as in Masses for the Dead? The reason for the doubt is that in Masses of the time of the Passion, the Psalm "Iudica me" (Judge me, O God) is omitted, as in Masses for the Dead; therefore, do Bishops, as the commentators on the Sacred Rites say, take the maniple before the pectoral cross?

Question IV. Is the Mass for the anniversary of the election and consecration of a Bishop permitted only on Sundays and other major feasts, as it seems to be inferred from the *Caeremoniale Episcoporum*, book 2, chapter XXXVII, section 1, or is it also prohibited on all feasts of the first and second class, not by command?

Question V. And if the answer to the second part is affirmative: can a commemoration of the anniversary be added to the conventual Mass under a single conclusion? The reason for the doubt is that the responses of the Congregation of Sacred Rites, when referring to sung and solemn Masses, seem to imply Masses that are not conventual in cathedrals and collegiate churches.

Question VI. Is this solemn Mass also prohibited in cathedrals and collegiate churches on other days that are not feasts, but excluding the two aforementioned restrictions?

Question VII. And if the answer to the previous question is affirmative: are the commemorations of the anniversary also excluded on these days in Masses that are read?

Question VIII. Should what is established for the anniversary of the election and consecration of a Bishop be understood as an established rule for the anniversary of the election and coronation of the Supreme Pontiff?

Question IX. Father Aloysius M. a Carpo, in his perpetual calendar, in the notes for the feasts of January, on the 6th, states: "No funeral ceremonies should be performed publicly on certain more solemn feasts, but the Office with prayers should be recited privately after Vespers."

[*Latin ed. p. 186*]

APPENDIX III. 186 Therefore, the question arises whether it is truly the case that a stone has been removed, but it is certainly known that no decree or law exists establishing that the Bishop, in these days, can, either by himself or through another, prevent funeral rites from being publicly performed; nor can the stone itself be removed, but rather, can it be cemented over with new cement? Or would the altar itself be considered profaned thereby, so that it would require a new consecration?

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Doubt X. And as to whether, in the name of funeral rites, and the solemn procession to the Church, and the sprinkling with blessed water accompanied by the recitation of the Psalm "De Profundis," which is performed by the choir at the door of the deceased's house, the same should be said in the case where it is doubted whether the stone has indeed been removed.

Doubt XI. Can the body be carried to the cemetery by way of the road without the customary singing, or alternately by the priests reciting Psalms?

Doubt XII. Can the Office of the Dead and the funeral prayers be recited in the Church?

Doubt XIII. The Sacred Congregation of Rites, on May 14, 1606, in Piacenza, declared a matter of grave importance on the day when a votive Mass was solemnly celebrated by the Bishop and the entire clergy and the citizenry, with the intervention of the magistrates. Therefore, the question arises whether it is necessary that the Bishop, unless legitimately impeded, be present at such a Mass, so that the Mass may be said for a matter of grave importance, and whether it can also be sung, both in lesser and greater Masses; or is it sufficient that only the consent of the Bishop be obtained for this Mass to be sung, without the intervention of the magistrates?

Doubt XIV. And when a tombstone from Fermo is not present in the altar:

I. The "Oratio" is not to be said from the Rubric in the Roman Ritual, but only at the end of the Mass.

II. Provided as in the preceding.

III. Affirmative for the first part, negative for the second.

IV. Negative for the first part, affirmative for the second, according to other decrees.

V. Affirmative when a Mass of the first class is not celebrated, in which nothing is done on the anniversary.

VI. Affirmative according to the Decrees.

VII. As in the preceding.

VIII. Affirmative as regards the Mass, where it is obligatory, and as regards the commemoration.

IX. and X. The Decrees are given in...

[*Latin ed. p. 187*]

APPENDIX: Piacenza, August 11, 1736 (1), in Lamacen, July 8, 1741 (2), and the General Decree of March 16, 1882 (3). Regarding XI and XII: As far as possible, the prescriptions of the Roman Ritual should be observed. Regarding XIII: Negative to the first part, affirmative to the second, III, 187. Regarding XIV: Affirmative, but only if the Apostolic faculty of delegating is obtained. Regarding XV: In this case, the usual form, or a shorter one, should be used, provided that this has been obtained from the Apostolic

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See. And thus it was decreed, declared, and ordered to be observed. May 18, 1883. (1) PLACENTIA. At the request of the Master of Ceremonies of the Cathedral Church of Piacenza, a certain doubt was submitted for clarification. Can the solemn funeral rites be freely celebrated by priests in the outer church, as is customary, while chanting the Office for the Dead with candles lit, after the services of that day have been completed on a Friday, the Parasceve, over the body of a certain nun exposed in the inner church? And the aforementioned Sacred and Royal Church, after hearing the information from the Bishop, reported to the Most Eminent and Reverend Cardinal Zondadari: it was judged that the response should be: "No, throughout the entire period; both the Office and the prayers should be recited privately." And thus it was declared. August 11, 1736. (2) LAMACEN. The nuns of the Monastery of the Wounds (das Chagas) in the City of Lamacen, under the rule of St. Francis, humbly petitioned for a declaration regarding the following doubt, presented in the vernacular language in the following terms: "To the Most Eminent and Reverend Lords: To the late Bishop, D. Antonio Telles, of the City of Lamego, who founded a monastery of nuns in that city, called das Chagas, under the rule of St. Francis, and who imposed on these nuns the obligation to recite the Divine Office daily, and that a chaplain should sing Mass at the hour of Vespers, which should coincide with the aforementioned Office, and that after this Mass, a Responsory should be sung over his tomb, located in the church of that monastery, without exception on any day. Therefore, the nuns of the aforementioned monastery, humbly recognizing that the singing of the aforementioned Responsory on feast days, and in particular on feast days of the first or second class, or on the occasion of any feast celebrated in that church, is inconvenient and causes scandal to the people, appeal to Your Eminences, humbly requesting them to declare whether, on the days mentioned above, it is permissible to omit the singing of the aforementioned Responsory, and to do so in advance on the day before, or subsequently on a day that is not impeded, singing as many as were omitted due to the impeded days, etc." And the aforementioned Sacred and Royal Church, after hearing the opinion of one of the Masters of Ceremonies of the Apostolic See, judged that the aforementioned Responsory for the deceased may be sung daily, as ordered by the testator, except on feast days of the first and second class, and on their octaves, and also during the entire week of the major octave. However, on feast days of the first class, and on the octaves, and during the aforementioned major octave, so that the pious will of the testator is not frustrated, it should be recited privately in the choir by the aforementioned nuns, after the canonical hours have been completed. And thus it was declared. July 8, 1741. (3) This General Decree has already been mentioned

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in this volume, page 52.

[*Latin ed. p. 188*]

488. CONGREGATION OF THE BENEDICTINE ORDER AT CALVARY IN FRANCE. The religious of the Congregation of Calvary of the Order of Saint Benedict, residing in the Diocese of Poitiers in France, obtained, through a decree of the Congregation of Sacred Rites dated January 25, 1866, from His Holiness Pope Pius IX, the faculty of performing the Divine Office according to the calendar approved for the French Congregation of the Order of Saint Benedict. Since the aforementioned decree contains the following words: "His Holiness, with paternal benevolence, has approved the proposed calendar, and has decreed that priests, both secular and regular, may conform to it in the aforementioned religious houses or chapels," the following questions arose, and were presented to the Sacred Congregation of Rites, with the consent of the Most Reverend Bishop of Poitiers:

Question I. Are the priests celebrating in the church of the Benedictine religious of the Congregation of Calvary obliged, by virtue of this decree, to say Mass in response to the religious offices, under the condition that these Masses be recited solely from the Roman Missal, or rather, to celebrate the Mass proper to the use of the French Congregation of the Order of Saint Benedict?

Question II. Can the same priests recite Masses approved for certain places only, when responding to the same religious Masses?

The Sacred Congregation, after careful consideration and a prior vote by one of its Consultors, responded as follows, based on the report of the undersigned Secretary:

To Question I: Affirmative, with respect to the first part, except for the feast of Saint Benedict and its octave; negative, with respect to the second part.

To Question II: Negative, if the Masses are not permitted for the diocese.

And so it responded. May 18, 1883. CUNEEN. The Most Reverend Andrew Formica, Bishop of Cuneen, having discovered during his pastoral visitation of his diocese certain things that did not seem entirely in conformity with the liturgical prescriptions, deemed it his duty to humbly request the opinion of the Sacred Congregation of Rites on the following questions:

Question I. Can the Bishop order that altars to which one ascends by two or more steps be additionally fitted with a wooden support, or at least be covered with a cloth, especially on solemn days?

Question II. In the Diocese of Cuneen, the custom has prevailed of leav-

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ing something on the altar during Mass, namely, in...

[*Latin ed. p. 189*]

IX. On the posterior side of the altar, a cloth is wrapped around a wooden rod, which is used to cover the altar during periods outside of Mass to prevent it from becoming soiled by dust. Can such a practice be approved or tolerated?

III. Can the practice of placing a crucifix upon the altar, and specifically in that location where the Most Holy Eucharist is exposed for public adoration, be tolerated? And, to the extent that it can be tolerated, can the practice of placing the crucifix itself upon the corporal used for the Exposition be tolerated?

IV. Is it permissible to support the lamp that is to burn before the Most Holy Sacrament with an arm made of metal affixed to the wall, resembling a cornucopia, or rather, should it be suspended by means of cords, as is the common practice?

V. Can the use of lamps made of glass that is not transparent and clear, but rather tinted with a color, such as green or red, be tolerated?

VI. On the occasion of a feast, a triduum, a novena, or a month dedicated to a particular devotion, such as the month of May dedicated to the Blessed Virgin Mary, or June in honor of the Most Sacred Heart of Jesus, is it permissible to transfer the Most Holy Eucharist from the main altar, where it is normally reserved, to altars erected on the sides of the church, so that Holy Communion may be distributed and a blessing imparted to the people during the feast, or throughout the triduum, novena, or month?

VII. On the solemnity of the Most Holy Body and Blood of Christ, it is customary in this diocese for the Bishop to celebrate Mass without music, wearing all pontifical vestments, with the assistance of all appointed ministers, and with incense at the Introit and the Offertory. Since this practice appears not to be entirely in conformity with the prescriptions of the Ceremonial of Bishops, is it permissible to retain it, given the very ancient custom?

VIII. According to a very ancient custom also in force in this diocese, whenever the Bishop is to solemnly bless the people with the Most Holy Sacrament, the Ostensorium is presented by a priest assisting, in place of the deacon, and this priest wears, in addition to his choir vestment, a stole. Since this appears to be contrary to the prescriptions of the Ceremonial of Bishops, book 2, chapter 23, number 12, and chapter 33, number 20, from which it seems a rule should be derived for similar functions that occur more frequently throughout the year, is it permissible to maintain this custom?

IX. The Roman Pontifical, Part I, describes in great detail all that must be said and done by the Bishop conferring the orders, and by those being

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ordained, guiding them as it were by the hand through each action of the sacred mystery. However, when it comes to the ordination of a deacon, it says: "Turning..."

[*Latin ed. p. 190*]

190 APPENDIX: He sings the Missal prayer for the day, along with a prayer for the ordained and those to be ordained, under the heading "Per Dominum" (Through the Lord). Having finished the prayer, the Priest sits, etc. » There is no mention here of other prayers that should be added to the Mass for the day, according to the rubrics of the Missal, which rather seem to be excluded. However, there exists a Decree of the Holy Roman Congregation of January 26, 1658, in Conc[il]io, in which the recitation of these prayers seems generally to be prescribed. Hence, the question arises: Does the arrangement of such a Decree apply only to particular ordinations, or those privately performed by a Bishop in his chapel, or also to general ordinations that take place in the Cathedral, but without singing and without the assistance of prepared ministers? Or, finally, does it apply even to those that are solemnly performed with singing and with the assistance of prepared ministers?

Doubt X. Is it permissible to begin the Mass on the night of the Nativity of the Lord so prematurely that, as the hour of midnight approaches, the Gospel has already been chanted?

Doubt XI. The Roman Ritual, in the Order for administering the Holy Communion, has the following rubric: "The Priest, returning to the altar, may say: O Sacred Banquet, and then 'Panem de coelo' [Bread from Heaven], etc. During the Paschal season, 'Alleluia' is added." The question is asked: Is the 'Alleluia' to be added to the antiphon 'O Sacred Banquet,' as the older commentators on the rubrics taught, or only to the verse 'Panem de coelo,' which is preferred by more recent commentators?

Doubt XII. When the tabernacle, adorned with a cope and stole, is carried by the Priest from the altar where it is kept, to another place where the Most Holy Eucharist is to be exposed for public adoration, must the end of the humeral veil hanging from the Priest's neck be opened?

Doubt XIII. When a double asterisk is found in the responsories, should the first repetition be made only up to the verse, or only up to the second asterisk? More recent commentators on the sacred rites, contrary to Gavantus and Merati, hold the latter opinion, citing two Decrees of the Holy Roman Congregation, one of which is dated September 6, 1834, in Lauretana, and the other December 7, 1844, in Mechlin. However, the first of these Decrees seems to grant only an indulgence to the Basilica of Lauretana; the second, moreover, concerns only the first responsory of the First Sunday of Advent, and the last in the Matins for the Dead, concerning which no doubt can arise, and therefore seems not to be relevant to the matter.

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Doubt XIV. In a recent edition of the Roman Breviary, published in Taurini [Turin], the following rubric is found for the octave day of the Dedication of the Church: "In the third Nocturn, Homily, as on a feast day, if all have been read during the Octave, otherwise, those that were omitted first." The question is asked: I. Is this rubric authentic?

[*Latin ed. p. 191*]

I. And, to the extent that it is negative, whether the rule transmitted by it is in conformity with the Rubrics and the Decrees of the Holy Ritual Congregation?

XV. Whether planets adorned with leaves and flowers, as is customary, can be tolerated, partly painted with a needle, and partly with the aid of brushes?

XVI. Whether, on the occasion of the solemn Triduum of the Exposition of the Most Holy Sacrament, it is permissible to play the organ during the solemn Mass on Sundays or weekdays of Advent and Lent?

The Holy Ritual Congregation, after carefully considering the opinion of another of the Masters of the Sacred Ceremonies, as well as the opinion of the Reverend Assessor of the Congregation itself, has decided to respond as follows to the aforementioned questions:

To I: Affirmative.

To II: Its use in this case is to be approved.

To III: Negative in all respects.

To IV: Both methods of using the lamp can be employed; provided that it burns continuously within and before the altar.

To V: Affirmative, that is, it can be tolerated.

To VI: Affirmative, provided, however, that the Most Holy Eucharist is not continuously reserved in two altars.

To VII and VIII: The custom in this case, being a veritable abuse and corruption, must be completely eliminated, and the Ceremonial of Bishops must be observed.

To IX: The disposition of another Decree in the Concilia must be observed in all sacred ordinations.

To X: The general rubric of the Roman Missal, title XV, number 4, must be observed.

To XI: In this case, the Alleluia is added, as well as the antiphons, etc.

To XII: The Most Holy Eucharist should not be carried in the ostensorium in this case, but in a ciborium, or, if that is not possible, in a sphere.

To XIII: Negative to the first part; Affirmative to the second, according to other decrees, and as noted in their proper places in the Breviary.

To XIV: The readings of the third Nocturn, which were omitted on the first day within the Octave, should be read, and when all have been read,

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the Octave will be observed as on a feast day, as in the Decree of Minoricen.

August 27, 1836 (I).

(1) MINORICEN. In order that the individual elements of the Sacred Ceremonies and Sacred Rites may proceed in order, the Reverend Bishop Minoricen deemed it appropriate to address the Holy Ritual Congregation and to present the following questions for clarification:

I. Whether, in the Mass of Saint Vincent, Levite Martyr, for whom the Office is recited annually in the Kingdom of Spain by Apostolic Indult of July 5, 1819, under the rite of the second class with an Octave, the Nicene Creed should be recited?

II. Since, due to the elevation of the rite of the aforementioned Feast of Saint Vincent, the Feast of Saint Anastasius Martyr is to be instituted on another day: it is asked whether, for the Office of Saint

[*Latin ed. p. 192*]

•192 APPENDIX Ad XV. It is permissible to do so. Ad XVI. Regarding the sound of the organ, III. In the case of strictly observing the Ceremonial arrangement; the Readings of the third Nocturn, and the Mass of the Common, may be assigned at will according to Anastasius. III. Is it also permissible to assign the Mass of the Common, which is in the first place, and the Homily, which is in the same Common, either in the first or second or third place, at will in any Office? And conversely? IV. When the Rubric, which precedes the Gospel in some Breviaries: "Do not think that I came to send peace upon earth," and the Homily, specifically for a Martyr and not a Priest, when the Mass is said: "In virtue of your power," or that which only speaks of a pious Martyr and not a Priest, should it be understood with the extensive particle only? V. Since there are different opinions regarding the designation of the Readings of the third Nocturn in the Octave of the Nativity of Saint John the Baptist, and on the day of the octave of the Dedication of the Church, if some say that they should be taken from the second day, others from the fourth day within the Octave, which rule should be observed with certainty and without doubt? VI. Since for some proper feasts of the Kingdoms of Spain, for which the Office is recited according to the rite of a lesser double, the Readings of the first Nocturn are of the Common, while for others they are from Scripture, which rule should be followed regarding the aforementioned Readings of the first Nocturn in Offices of a lesser double? VII. Regarding the same Readings of the first Nocturn in Offices of a lesser double, should the arrangements of the Directory or the Breviary be followed? VIII. Is it permissible in Offices of a lesser double, and even semi-doubles, to take the Readings of the first Nocturn at will, either from the Common or from Scripture, when there is a difference between the arrangement of the Directory and the Breviary? IX. Should those feasts, which were previously granted to some Churches or Dioceses with their own Readings of the first Nocturn, or from the Common, retain

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the Readings of the first Nocturn, either their own or from the Common, now that the extension has been granted for all the Kingdoms of Spain, or for the entire Clergy with their own Readings? X. In all feasts in which there are proper responsories, should the Readings always be taken from the Common in the Nocturn? The Most Eminent and Reverend Fathers, Prefects of the Sacred Rites, in the ordinary assembly at the Quirinal, having been gathered on the aforementioned day, after mature and diligent examination, and having received from me, the undersigned Secretary, a faithful report, considered it necessary to answer each of the proposed doubts. Ad I. Affirmative, as granted. Ad II, III, and IV. In the case, the Mass "In virtute tua" should be said, with the Gospel "He who is least among all." as an instance of the concession made to the Clergy of Ulysses on September 17, 1744. In similar cases, petition particularly. Ad V. "The peculiar rubric of the Roman Breviary should be observed, so that when no Readings have been read within the octave, the Readings of the octave should be read on the octave day, as on the second day; but when all have been read, they will be in the feast of the octave." Ad VI. "The Readings of the first Nocturn should be from Scripture, unless different ones are expressly assigned in the Indult." Ad VII. "This has already been said." Ad VIII. and IX. As to the next. Ad X. Affirmative. And thus they wrote, and ordered that it be observed. August 27, 1836.

[*Latin ed. p. 193*]

APPENDIX III. 193 Decrees, especially those from Taurinen, September 11, 1847 (1). Although Mass was not celebrated in the morning, but rather after Vespers, the following was decreed and ordered to be observed. On July 2, 1883, it was declared and commanded that, when a Canon or even a simple priest celebrates, he should wear the amice, alba, cincture, stole, and cope, with a deacon and subdeacon present, prepared as if for Mass, but without the maniple. Hence, the Sacred Congregation inquired: I. Whether this practice is in accordance with the rubrics? II. And, if not, whether a Canon celebrating a solemn Mass with the Most Holy Eucharist (and on the feast of Corpus Christi, in its proper place) should wear only the rochet and cope, or if a simple priest should wear the stole? And III. Whether, when assistants are present, the deacon should wear the rochet, or whether the case should be as follows: the rochet? (1) TAURINEN. The present Prefect of the Congregation of the Oratory in the City of Taurinen, having discovered certain customs in his own church which do not entirely agree with ecclesiastical regulations, considered it advisable to present them to the Sacred Congregation of Rites, and at the same time to request that they at least be permitted; for he believes that it is very difficult to abolish them. These customs are explained in the following three questions: 1. Whether it is permissible to use the organ during the sacred seasons of Advent and Lent, on Sundays, for solemn Masses and Vespers? 2. Whether it is also

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permissible to omit the singing of the Introit, Offertory, Communion, and the Sequence (when it occurs after the Epistle) in Masses with singing? Also, whether the entire Sequence *Dies irae* and the Offertory are omitted in Masses for the dead, and whether, after such Masses for the dead, which are nevertheless sung without obligation, it is permissible to omit the singing of at least part of the absolution? 3. Whether it is permissible to use the custom whereby, after Vespers on Thursday of the week in the Octave of Corpus Christi, the altar is stripped by a simple priest wearing a surplice and stole, with two clerics also wearing a surplice, but not by the celebrant with his ministers, as is indicated in the Missal? And the same Sacred Congregation, convened in its Ordinary Session on the day indicated below, with myself as Secretary, after careful examination of the prayers and decrees, responded as follows: To 1. "Regarding the sound of the organ, the ceremonial disposition must be strictly observed, notwithstanding the custom." To 2. "Either Masses for the Dead should not be celebrated, or everything that pertains to the prayer for the suffrage of the dead should be sung." To 3. "The custom can be maintained, provided that the priest strips the altar on Thursday of the week in the Octave of Corpus Christi." September 11, 1847. From the Acts, Volume XXII, page 656, number 13.

[*Latin ed. p. 194*]

19 4. It is asked whether, indeed, acolytes and subdeacons ought to put on the vestments of their order, or rather, the superpellice with the pluvial? The Sacred Congregation of Rites, having heard the opinion of another of the Masters of the Ceremonies of the Apostolic See, concerning the following question, judged that the following answer should be given: To I. Affirmative, as is prescribed in the Ceremonial of Bishops. To II and III. Provision is made in the first. And thus it responded. On June 15, 1883. CONGREGATION OF THE MISSIONARIES OF THE MOST HOLY AND IMMACULATE VIRGIN MARY. By the bull of His Holiness Pope Benedict XIV, dated February 24, 1748, Saint Francis Xavier is to be held as the Principal Patron of India, with all and singular privileges which, according to the rubrics of the Roman Breviary and Missal, belong to the principal patrons of places, and therefore his feast is to be celebrated each year there under the rite of a double of the first class with an octave. Now, indeed, a doubt arises as to whether Religious Orders and Congregations, which have their own office, are entirely subject to the prescription of the aforementioned Bull; and therefore, whether they ought to 1. Make the commemoration of the same Saint whenever the common commemorations are recited in the office? 2. Celebrate the feast itself under the rite of a double of the first class? When the priest Hector Maursit, from the Congregation of the Missionaries of the Most Holy and Immaculate Conception of the Virgin Mary, in the island of Ceylon, humbly requested a solution to this doubt from the Sacred Congregation of Rites; the same Sacred Congregation, with the

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reference of the undersigned Secretary, responded as follows: To I. Affirmative, given the established custom. To II. The feast, in the case of Religious, is to be celebrated without an octave, unless this has been specially granted to them. And thus it responded. On June 15, 1883. URGELL. The Master of Ceremonies of the Cathedral Church of Urgel, and professor of the Sacred Liturgy, with the consent of his Bishop, proposed the following question to the Sacred Congregation of Rites for resolution, namely: It is the common practice in churches, especially parochial churches, to receive the offerings of the people at the balustrade after the Offertory has been recited, on the more solemn feasts. However, some offer the Wood of the Most Holy Cross, while others offer a cloth or, especially, the hand, to the faithful, for them to kiss, while saying, "Your offering is accepted by God." The same is observed in funeral Masses with regard to the kiss.

[*Latin ed. p. 195*]

x meters of stoles or maniples. This practice cannot continue – is it not easily dispensed with? Regarding this matter, the same Sacred Congregation responded on December 30, 1881, stating: "Let it be observed in all cases, according to *Caeremoniale Episcoporum*, book 1, chapter 18, number 16, and let the celebrant remain silent when receiving the faithful's offerings. However, the custom of kissing the stole or maniple may be maintained, except in Masses for the Dead." Indeed, in light of the aforementioned resolution, many pastors of this diocese humbly appealed to their own bishop, presenting the serious difficulties to which the execution of the aforementioned decree gives rise. It is said that the people, not without some annoyance, fear the omission of the kiss of the stole or maniple when receiving offerings in Masses for the Dead, lest they refuse to make offerings (since, if they do not understand this in their village, they consider the entire essence of the offering to consist in the kissing of the aforementioned stole or maniple), to the detriment of the alms which are largely derived from these offerings for the departed fathers or relatives, and which are used for prayers. Therefore, this salutary and praiseworthy practice undoubtedly brings great benefit to the piety of the faithful, since not only in funeral services, but also on many days throughout the year, families or relatives of the deceased attend church to offer these donations and to obtain prayers for the faithful departed, both in Masses and in other functions, especially during the year of mourning. Considering these matters carefully, the Most Reverend Bishop of Urgell deemed it his duty to approach the same Congregation of Sacred Rites, and to earnestly implore it to deign to tolerate the aforementioned custom of kissing the maniple or stole when receiving offerings that are made in Masses and other services for the dead, so that the opportunity for murmurs against the pastors may be removed, and the piety of the people may be fostered and the charity towards the souls of the departed increased day by day.

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Also, regarding the question posed by the same Master of Ceremonies to this Sacred Congregation of Rites: "By whom, indeed, should the Relic of the Holy Cross be carried when proceeding from the sacristy to the altar in more solemn Masses throughout the year, if, from the most ancient times, a general custom has prevailed, especially in this ecclesiastical province of Tarragona, that the aforementioned Wood of the Holy Cross should be carried by the celebrant in the cases mentioned by him, or by the subdeacon?" The same Sacred Congregation, on February 27, 1883, replied, stating: "The custom of carrying the Cross in this case is to be eliminated." However, since similar difficulties arise in executing the aforementioned resolution as in the previous question; it is to be feared that...

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196. It is not fitting that the people be prevented from bringing the Wood of the Holy Cross in the aforementioned cases, since they are unable to kiss the aforementioned Relic after the Offertory of the Mass, in the very act of presenting the offerings, which indeed contribute greatly to the solemnity of the celebration; therefore, the Bishop requests that the Orator from the Holy Congregation of Rites permit the aforementioned practice of bringing the Holy Cross in the case tolerated by the celebrant. The Holy Congregation of Rites, after carefully considering the following request, made by the Secretary, has responded as follows:

I. Considering the newly presented information, which clarifies the case, the custom can be maintained in both Masses for the living and for the dead, provided that the faithful are given the opportunity to kiss it, either with their hand or with the edge of the maniple or stole, excluding entirely the kiss of the Wood of the Most Holy Cross, to which a special and particular cult is entirely due in the Church.

II. Furthermore, in order to avoid all scandal, the faithful should be instructed by the Bishop or the Parish Priest about the special and higher cult that is due to the salutary Wood of the Cross of Our Lord Jesus Christ. And thus it was responded. On June 25, 1883, the present Prior of the Choir of the Metropolitan Church of Siena humbly requested a solution to the following doubts, with the consent of his Most Reverend Archbishop:

Doubt I. Is it permissible for a Canon, celebrating a solemn Mass, assisted by a Priest wearing the alba, amice, and pluvial, and not the superpellice, to wear the amice and pluvial, as clearly stated in the Ceremonial of Bishops?

Doubt II. Is it permissible for the Priest, during funeral services, to cover his head with a biretta when he incenses and blesses the incense?

Doubt III. Is it permissible for the choir, on Sundays and all more solemn feasts of the Blessed Virgin Mary, to immediately after the "Benedicat et custodiat nos" at the end of the Compline, intone the hymn "O gloriosa Virginum," etc., and thus proceed processionally to the altar of the Blessed

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Virgin to sing the antiphon, whether it be "Ave Regina coelorum," or "Alma Redemptoris mater," or "Regina coeli," or "Salve regina," according to the time, and after the singing of this antiphon, immediately intone and sing the Lauretan Litany, suppressing the recitation of the "Pater, Ave, and Credo" prescribed by the rubrics at the end of the Compline?

Doubt IV. If the Procession outside the Church is prevented during the major Litany of St. Mark's Gospel and the Rogation Days, should the Litany of the Saints, which is performed within the Church, be repeated, as is customary?

[*Latin ed. p. 197*]

197 APPENDIX III. "Should the Litanies be sung on Saturdays and also on the Vigil of Pentecost?" Thus it was written and declared. On June 30, 1883. Question V. Whether, when the oils are consecrated on Holy Thursday during the Mass of the Whole City and the Whole World, two Deacons ought to assist the Bishop who is consecrating, according to Apostolic Letters in the Breviary, or whether only Deacons and Subdeacons are required for the Mass? Question VI. Whether it is permissible to have the custom of exposing the Most Holy Eucharist without any hymn singing and without incense? Question VII. Whether it is permissible to have annual feasts in the Canonically appointed Doctor, when he celebrates or sings Mass? The Sacred Congregation of Rites, having considered the aforementioned report from the Secretariate, and having heard the opinion of another from the Masters of the Apostolic Ceremonies, after mature deliberation, decided to write as follows: To I. Affirming, assuming the memorable custom, that the Canonically appointed Doctor ought to be vested in the usual manner, above the cassock. To II. The custom in this case is not to be tolerated, but rather to be entirely permitted. To III. The custom can be maintained, provided that the Office is recited integrally, including the Prayer. To IV. Affirming. To V. Negative in the first part, Affirming in the second part. To VI. The custom of exposing the Most Holy Eucharist without incense is to be entirely eliminated. To VII. Negative.

The Sacred Congregation of Rites, having added the following in relation to the aforementioned report, after hearing the opinion of another from the Masters of the Apostolic Ceremonies, and after mature deliberation, decided to rewrite the rubrics as follows: It is commanded that the following be changed, except for the translations of the lesser feasts (except for those of the Doctors of the Church) and the semi-feasts. Therefore, the Sacred Congregation, on June 23 and July 1 of the current year, again convened to perfect, according to the aforementioned norm, the correction of the rubrics. By the order of the same Most Holy Lord, certain further changes were noted in the altered rubrics, which they considered to be entirely necessary for a new arrangement. It is understood that, according to the purpose of the newly issued law, there remain more than enough

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free seats for the introduction of new offices.

[*Latin ed. p. 198*]

498. Offices to be introduced in the Calendars; meanwhile, however, the burden of the Feria Offices will be increased to no small degree: which, given the diminished number of clergy today, and the increase in other burdens placed upon them, is deemed most unsuitable. Furthermore, as recently, His Holiness, in order to avoid the Offices of the holy Abbot Benedict, the Confessors Dominic and Francis, often being reduced to a simpler rite, or even entirely omitted, by virtue of a changed rubric, has elevated them to a higher, twofold rite; so too, it is deemed necessary to provide for the Feasts of the Commemoration of the Apostle Paul and the Angels Custodes; considering the particular nature of each Office, and also the special privileges of the rubrics, by which these have hitherto been enriched. Finally, it has become apparent, on this occasion, that the Commemoration of the Octave of the Apostles Peter and Paul is hindered by the Feast of the Precious Blood of Our Lord Jesus Christ, which has been recently elevated to the rite of the second class, and by the Feast of the Visitation of the Blessed Virgin Mary to the same rite. This is considered to be a matter that must be received with regret in Rome, which the most blessed Princes of the Apostles have so greatly ennobled above all the nations of the world, and which is established as the center of Catholic unity, and the supreme and unwavering teaching of truth. Therefore, the Sacred Congregation of Rites, having carefully considered all of these matters, has decreed the following, if it pleases the Most Holy Lord:

I. A General Indult is granted to Chapters and to all ecclesiastical communities, as well as to individual members of the clergy, to fulfill Votive Offices throughout the year in place of the Feria Offices, except on the Feria days, Ash Wednesday, throughout the entire season of Lent, and the Sacred Advent from December 17th to 24th inclusive: regarding choral recitation, with the consent of the Chapter or community, to be approved once for all by the Ordinary; regarding private recitation, at the discretion of each individual member of the clergy. The Votive Offices for each day of the week are assigned as follows, and are nearly identical to the Votive Masses found in the Roman Missal: for Feria II, of the Angels; for Feria III, of the Holy Apostles (in Rome, of Saints Peter and Paul); for Feria IV, of Saint Joseph, Spouse of the Blessed Virgin Mary, Patron of the Catholic Church; for Feria V, of the Most Holy Sacrament; for Feria VI, of the Passion of Our Lord Jesus Christ; on Saturday, of the Immaculate Conception of the Blessed Virgin Mary. These Offices themselves shall be approved and published by the Congregation of Rites. All other Indults for Votive Offices

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already granted remain in force.

[*Latin ed. p. 199*]

APPENDIX III. The Feast of the Commemoration of Saint Paul the Apostle on June 30th, and of the Most Holy Angels on October 2nd, are to be elevated from the Lesser Double to the Greater Double throughout the entire Church. III. Concerning the Feast of the Holy Apostles Peter and Paul, celebrated on June 29th in Rome, the Commemoration shall be held on each of the eight days following, whenever a feast occurs. The aforementioned matters having been faithfully reported to His Holiness, Pope Leo XIII, the Holy Father approved and confirmed all that is contained therein, and ordered it to be made public. On July 5th of the same year, 1883. FROM: The Reverend Monsignor Casimiro Gennari, the present Bishop of Conversano. To the Sacred Congregation of Rites, I humbly submit the following questions for a suitable solution: Question I. In several places within the aforementioned Diocese, it is customary for the people to be blessed with a small, linen cloth, without the use of the humeral veil. Is this practice permissible? Question II. On certain popular feasts in honor of the Blessed Virgin or of some Saint, after the choral Office has been completed and after Mass, a procession is often held, and then another Mass is sung in honor of the Saint. Frequently, either through the offering of a faithful person requesting it, or to fulfill the obligations of the Chapter, another Mass is sung in honor of the feast being celebrated, after the singing of the Conventual Mass. Finally, many Masses for the repose of the souls of the deceased are often sung on the same day, in order to fulfill obligations. Is it permissible for these customs to continue? Question III. In the Roman Ritual for administering Baptism to infants, it is only initially suggested that the form (by him or by her) should be varied according to the sex of the infant, and then nothing further is said. Is it necessary to vary the form in each place? Question IV. In administering the Sacrament of Confirmation, should the Creed, Our Father, and Hail Mary be recited by the Bishop, along with those present, or is it sufficient for the Bishop to remind the godparents of their obligation to teach these prayers to the newly confirmed, as prescribed in the Roman Pontifical? Question V. In the Cathedral and Collegiate Churches of the place called Rutigliano, for a long time, during the octave of the faithful departed, and during the three days following the Sundays of Septuagesima and Sexagesima, after the completion of the Divine Office, the Most Holy Sacrament is exposed by a priest wearing a white alb, and after the singing of the hymn "Pange lingua" and after the incense has been offered, the Most Holy Sacrament is covered with a veil. Then, a...

[*Latin ed. p. 200*]

200. The priest puts on a black cope, and the Vespers of the Dead are

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sung; and after the absolution, the tomb is opened with the singing of "Deliver me, O Lord," and then the priest puts on a white cope again, and the Most Holy Sacrament is exposed. After this, with the singing of "Tantum ergo," the blessing is given to the faithful. The question is asked whether it is permissible to observe such a practice? And the same Sacred Congregation, after considering the opinion of a Secretary, previously obtained by a careful vote from another of the Masters of the Ceremonies of the Apostles, and after mature deliberation, decided to respond as follows: To I. Negatively. To II. They should satisfy by celebrating a Mass chosen for the saint, either one or several, outside the choir. Regarding III. The Masses for the Dead are to be celebrated affirmatively, with the rubrics observed and the words spoken with the Most Holy. To III. Affirmative. To IV. The custom of reciting it in this way, as it is laudable, should be maintained. To V. Affirmative, provided that the exposition of the Most Holy Sacrament takes place after the Office for the Dead has been completed, and if possible, after the tomb has been removed, or at least after the candles burning around it have been extinguished. And thus it responded and declared. On July 13, 1883. Furthermore, the Most Holy Lord Pope Leo XIII, through the aforementioned Secretary, received a report regarding the second question, and His Holiness ratified and confirmed the resolution of the Sacred Congregation on August 14 of the same year.

[*Latin ed. p. 201*]

201. BRIEF, whereby the College of Octavae is increased in dignity and rights as a Catholic University. Since the Apostolic See has always diligently applied its efforts to preserving the integrity of the faith and the discipline of morals, and has also diligently striven to provide ample institutions for the cultivation of doctrines and the liberal arts for Catholic youth, in which the proper formation of the mind and spirit can be drawn forth for the benefit of private and public society; and since it has considered such institutions to be of great importance, it has never failed to offer its authority and support to promote their dignity, stability, and prosperity. For these reasons, We were pleased to learn that, since the year 1848, the distinguished College of Octavae, located in the Canadian region, was founded for the purpose of educating Catholic youth by Joseph Eugene G-uigues, of blessed memory, a priest of the Congregation of the Oblates of the Immaculate Mary, who was the first Bishop of Octavae, and that the College has happily experienced increasing growth from day to day, both through the expansion of the College building with new structures, and through the establishment of a library, museums, and all instruments for comprehensive education, and through the gathering and attendance of students, whose praise and reputation have attracted them from distant places, so that the College itself, by decree issued by the supreme legislative council of the Canadian region in 1866, has been deemed worthy to receive

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the just and legitimate name of a civil University, and to be granted all the rights with which other Universities enjoy the authority of civil power. Since these things have happily and successfully occurred for the College of Octavae, in the year 1888, prayers were offered to Us by the Prefect of the Congregation of the Oblates of the Immaculate Mary, and by the decanal doctors of the College, as well as by letters from the Archbishop of Octavae, urgently requesting that the aforementioned College of Octavae, so highly recommended by so many names, be increased in dignity and rights as a Catholic University, according to the established practice and institution of the Apostolic See. We readily deemed such prayers to be worthy of acceptance. For We know how many opportunities a great Lyceum has for the...

[*Latin ed. p. 202*]

202 Letters of instruction, established in the most noble city of Ottawa, enhanced by the honor of the Archiepiscopal cathedral and the seat of civil government, are constituted. This place, situated in a central location among other cities of the Canadian region, is easily accessible to all who travel, and, due to the presence of the most distinguished men who sit in the highest councils of civil power, and who administer public affairs, it receives a splendid addition to its dignity. We also know that, with great zeal, the beloved sons, members of the Congregation of Oblates of the Immaculate Mary, have devoted themselves to the work of educating youth since the year 1848, generously contributing their care and resources to this salutary work, and diligently protecting it. Furthermore, we know that the superiors of the same Congregation have always held dear among their members, obedience to the Apostolic See and to the sacred pastors, as befits them, and have promoted their outstanding students to the office of teaching in the College of Ottawa, of whom many have been adorned with the degree of Doctor in the Gregorian College of the Society of Jesus in this venerable city, and have also diligently ensured that philosophical and theological instruction be imparted according to the doctrine of Saint Thomas Aquinas. We have, therefore, learned that many and distinguished students have emerged from the discipline of the professors of Ottawa, who have gained widespread recognition and honor for their instructors. Therefore, having duly considered these matters, and readily agreeing with the common sentiments, We, along with the Venerable Brother Joseph Thomas Duhamel, Archbishop of Ottawa, and the superiors and members of the Congregation of Oblates of the Immaculate Mary, and other illustrious citizens of Ottawa, by these letters, for the greater glory of God, and for the growth of the Catholic religion, and for the honor, utility, and benefit of the Canadian region, We elevate the College of Ottawa, founded by the Congregation of Oblates of the Immaculate Mary, for the education of Catholic youth, whose administration and instruction are carried out

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by the priests of the same Congregation under the authority of this Holy See and the Archbishop, to the dignity of a Catholic University, and We grant to that University the right to confer the degree of Master, and other academic degrees in all branches of learning, according to the customary statutes and laws of Universities. Furthermore, it is of great importance for the prosperity and honor of the University that it be prudently established with proper and suitable laws, by which its administration may be appropriately guided; therefore, We wish and decree that the statutes and laws of the same University be presented to this Apostolic See at the earliest opportunity, so that, after careful consideration, They may be able to...

[*Latin ed. p. 203*]

LETTERS 203 to add strength to its authority. Furthermore, We desire that the Apostolic Chancellor, exercising his office within the same University, the Venerable Archbishop of Octavia and those who will succeed him in the Archbishopric, perform their duties, and that the Archbishop himself and his successors, as well as other Bishops of the Provinces of Octavia and Toronto who have established seminaries, colleges, and other similar institutions, be present to uphold sound and correct doctrine within the same University. Finally, We grant to the same University the power to admit, in accordance with the custom of the Great Lyceum of Quebec, students who are being educated in seminaries, colleges, and other ecclesiastical institutions of the Provinces of Octavia and Toronto alone, into the number of its students, and to treat them with the same favors as other students of the Octavian Lyceum. These things We desire and decree, and therefore We ordain that these Letters of Ours shall always exist and be valid and effective, and shall have their full and complete effects, and shall fully prevail for those to whom they pertain, and for all time, in all respects; and that in the aforementioned matters, by any judges ordinary or delegated, even Auditors of the Apostolic Palace, Messengers of the Apostolic See, and Cardinals of the Holy Roman Church, even as Legates, without any exception, and without any possibility of them judging or interpreting otherwise, they must be judged and defined, and that they shall be null and void if, concerning these matters, anything should happen to be attempted by anyone, knowingly or unknowingly, with any authority whatsoever. Notwithstanding any special and individual exceptions or derogations to the contrary.

Given at Rome, near the blessed Peter, under the Fisherman's ring, on the 5th day of February, 1889, in the eleventh year of Our pontificate.

For the Lord Cardinal Ledochowski, L. S. F. Fausti, Substitute.

[*Latin ed. p. 204*]

204 FROM THE HOLY CONGREGATION OF THE COUNCIL OF FULGINATA. GRANT OF JUBILEE. On May 4, 1889. Through a summary

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of petitions, the priest Caietan Santopaolo, canon of the cathedral church of Fulginata, presented a humble petition stating: that for a period of 41 years he had served his Church without interruption in various offices; now, however, he is afflicted by various inconveniences of life, in addition to old age; and therefore he requests the grant of a jubilee, since the service of the choir has already become very burdensome for him; and since at present no one enjoys such a privilege in this Cathedral. These humble letters were sent to the vicarious of the chapter who at that time administered the diocese of Fulginata for information and a vote, so that, after hearing the chapter and examining the records of attendance, he might report on the service of the choir rendered by the petitioner, on the number of canons capable of serving in the choir, and on the detriment that would result from the granting of the requested jubilee for the service of the choir. The chapter gave a response: that the petitioner had truly and diligently served for approximately 40 years; that many other canons are occupied with various offices, and are often absent from the choir; and that with regard to the detriment that would result from the service of the choir due to the requested jubilee, they completely submit to the judgment of the Holy Congregation. But in a subsequent meeting on October 1, it was believed that the following should be added and brought to the attention of the Holy Congregation, namely, that in part 1, chapter 1, page 8, there is a canon that states that canons who have rendered exact and commendable service for forty years are considered, as it were, retired. From these words, the canons themselves argue that the petitioner should be considered to have fulfilled the 40 years of service required as a canon, and that, in requesting a jubilee, he is no longer considered capable of other services. It should be noted that others...

[*Latin ed. p. 205*]

FULGINATEN. 20. Canonici qui in eadem conditione sunt et qui petunt, si obtinuerint iucunditatem, hoc in Capitulo. Quaestio autem orta est si ille qui per 12 annos tantum ut canonicus ministerium praestitit, ius habeat ad massam, quae omnino distincta est a praebendis canonicalibus. Ex parte sua autem Vicarius Capitularis censuit: "Verum est canonicus oratorem laudabiliter praestitisse choro ministerium 40 annorum, sed similiter verum quod si iucunditatis beneficium obtineret ministerium chorale sentiret detrimentum." Disceptatio Synoptica: Oratoris precibus obstat hoc detrimentum, quod, Vicario Capitulari testante, divino cultui, et chori ministerio esset utile, si iucunditas concederetur. Item aliquatenus obstruunt constitutiones, quae, si juxta posterius capituli votum interpretentur, prohiberent ut iucunditas canonicis concedatur, nisi totum 40 annorum ministerium in ministerio canonico absolverint. Siquidem Caietanus Santopaolo non nisi 12 annos canonicus fuit. Verum cum significatio quae obiecto constitutionum

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articulo adscribitur, certa aut saltem undique explorata in se non sit, et insuper a contraria consuetudine, ipso confitente capitulo, benigniori ratione interpretetur; hinc suum pondere cadit obiectio, et unice contra preces restat difficultas providendi chori ministerio. Favet vicissim praxis constanter apud Apostolicam Sedem observata et in iusta aequitatis causa fundata, adeoque imo recepta, ut Sanctissimus Huic C. tolerandum olim visum fuerit statutum cuiusdam capituli, expresse permittens ut, qui canonicus per annos quadraginta chorum laudabiliter frequentasset, ab eiusdem ministerio deinceps sine fructuum et distributionum iactura abstinere posset; quae sententia a Gregorio XIII approbata et confirmata fuit, sicuti videri est apud Garziam De benefic. part. 3 cap. 2 § 1 num. 344. Imo paullatim illud insuper usu inductum est, ut a S. C. C. iubi-

[*Latin ed. p. 206*]

206 FULGINATEN. That indulgences should be granted, even if neither custom nor a capitular statute applied to this matter in any way; Lucidi, vol. 1, page 315, new edition. Furthermore, the grace of *jubilatio* is understood to pertain not only to benefits granted, but also to daily distributions, and even to participation in the offerings of others, and in the revenues of anniversaries, provided that this does not contradict the will of the testator or donor, or the statutes and customs of the Church; this is a completely established and frequently affirmed principle by the Sacred Congregation, as can be seen from the document *Lucana Exemptionis* of January 30, 1858. Therefore, the Sacred Congregation primarily upholds the granting of the grace of *jubilatio* based on established practice; but, moreover, necessity compels it. Indeed, the canon Santopaolo, on his designated days, and as testified by two physicians, who reported the matter in writing, suffers from an infirmity which, for a prolonged period, prevents him from standing without endangering his health; in fact, he repeatedly requires surgical intervention. To this infirmity, another has recently been added, which afflicts his heart. Therefore, he himself wrote: "If, despite this, which is no small matter, the grace of *jubilatio* is denied, I believe it would be better to entrust myself to divine providence and the justice of God, and to hasten the decree of death." Given this situation, since necessity does not have a law, it seems inappropriate to pay much attention to what is said about the needs of the cult. Even more so, when it is alleged that the presence of the orator in the choir is necessary, thereby detaining several other canons who are occupied in various duties; these duties, although laudable, and perhaps even necessary and undertaken freely, cannot prevent the granting of just stipends to the soldier who has long labored, and who has spent his life and strength in service, and who has earned his due rewards. Considering these matters, the question arose as to how the prayers should be addressed.

RESOLUTION. The Sacred Congregation, having considered the matter,

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decided on May 4, 1889, to respond: "For the grace of *jubilatio*, with the usual conditions."

(1) *Ecclesia Volumina* XII, 237; XIV, 84; XIX, 458.

[*Latin ed. p. 207*]

207. GRANADA. On the 4th of May, 1889. Session 25, chapter 4, concerning reforms. SUMMARY OF FACTS. Four thousand paces from Granada, in the place called La Zubia, there is a property known as the garden of Lauri, which is among the most famous villas in the suburbs of that city, because it is considered a near miracle and a singular act of Divine Providence concerning Elizabeth I, Queen of the Catholics. Indeed, when that Queen desired to see the city of Granada more closely; while besieging it in the year 1495, in order to redeem it from the power of the Saracens, feeling herself surrounded on all sides by the approach of the infidels, she hid herself hastily among the laurels of this garden, which are still religiously preserved, and was then, as it were, miraculously brought safely back to her camp. This villa, in the year 1862, having been sold by several private owners, came into the possession of another of the same name, namely, Queen Elizabeth II; who, however, for reasons well known to her, or perhaps even, in order to more sacredly preserve the place as a part of the history of the nation, in the year 1884, spoke with the Archbishop of Granada, at that time Benvenuto Monzón Martin y Puente, so that he would buy this garden from her. And in truth, she sold it to him for 20,000 ducats, reserving only that small part in which is found the "Laurel of the Queen," and a small chapel beside it, as if it were the place where Queen Elizabeth is said to have stayed during the conquest of Granada. The Queen sold the garden to the Archbishop of Granada, Monzón Martin y Puente, and his successors, free from any burden, under these conditions: 1. that the reserved part of the garden would be defined by certain boundaries, in memory of the tradition, at the expense of the owners of the garden; 2. that the Archbishop and his successors, and also 3. the Queen and her heirs, would retain the right of pre-emption for purchase.

[*Latin ed. p. 208*]

208 GRANADA. If it should happen that one of the contracting parties wished to sell his respective portion of the garden. This contract was signed on April 3, 1884. After a year, the Prelate of Monzón was transferred from the Granadan See to the See of Hispalensis; and, desiring not to lose the villa he had purchased, and doubting whether he could do so because of the words added to the contract for himself and his successors, he consulted the Queen; who declared that the Archbishop of Monzón, even though translated to another See, could continue to enjoy the rights of ownership in the garden acquired, as long as he lived, in whatever way he chose. For the Queen wished, from the beginning, that the garden should belong to

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the purchaser and his successors in the Granadan See; with the intention that, if at any time the Government should attempt to seize this property, the Archbishop of Granada might be able to dispose of it at that time, just as he would dispose of private property or a private estate. She also wished that this declaration should be added in its entirety to the purchase and sale contract and inserted in the public records. This was done on June 17, 1885. But shortly after, on August 10 of the same year, the Archbishop of Monzón, having been seized with a fever from India, died. However, in the short time between the purchase of the villa and his death, he spent 11,000 scudi, in order to restore the villa and its house, which was scarcely fit for the dwelling of peasants, and to convert it into a palace worthy of an Archbishop. Of these 11,000 scudi, he received 8,000 from Ignatia Wals, a pious woman who subsequently dedicated her widowhood to the Lord, and spent all her possessions on pious works; the remaining amount he himself spent. And, being near death, he made the following disposition in his will, concerning the matter that now interests us: "It is my will that the garden which I purchased, and the house which was built there, should pass to the Archbishop of Granada, for the time being, as a villa, for the purpose of recreation, with the obligation of providing annually one thousand *libellas* to the Hospital for Poor Priests, which I founded in this city; and of celebrating two anniversaries, one for myself, and one for Mary Wals."

[*Latin ed. p. 209*]

GRANADA. 209 The testamentary executors of the cathedral church of Granada elected six chapter members. However, the succeeding Archbishop wished to accept the property, but not the obligations, at least formally. The testamentary executors resisted. And thus, a long and laborious disagreement ensued, until the Archbishop, "on January 21, 1886, as a final offer," as the executors state, "submitted a schedule to us at his own expense, and we, as before, requested him to do what his charity or will suggested regarding the obligations; but he replied that he desired to satisfy the wishes of the deceased." This was not acceptable to the executors, who preferred "to record the aforementioned sum of 200 scudi either as a perpetual pension in favor of the Xenodochium, as the laws permit, or as a consultative tax in the public records." After further discussions, both parties finally agreed to appeal to the Holy See. The Archbishop appealed to the Sacred Congregation for Extraordinary Affairs, while the executors appealed to the Sacred Congregation of Causes of Saints. However, at the request of the Archbishop himself, the petition was quickly transferred to the Sacred Congregation of Causes of Saints, which is therefore the sole body called upon to judge this matter. Synopsis of the Dispute. ARGUMENTS OF THE TESTAMENTARY EXECUTORS. The testamentary executors, concerning their case, state: "It will suffice to express our reasons with the utmost clarity. We are nothing more

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than testamentary executors, and therefore we consider it forbidden to deviate from the will of the testator. We cannot allow the current Prelate to enter into possession of the villa and palace, unless under the conditions stipulated by the purchaser of the villa and the builder of the palace. We believe it is our duty of conscience to establish the aforementioned pension for the Xenodochium, as well as the two annuities, under the protection of the law, all the more because we are certain that the aforementioned religious community will demand this. These matters would be pleasing to us, and would not seem arbitrary, even if a doubtful matter were involved. For it remains, not only according to the law, but also according to common sense, the principle: 'In dubio, praesumitur factum quod de iure,' [In case of doubt, the fact is presumed to have occurred according to the law], Acta, Vol. XXII, p. 256."

[*Latin ed. p. 210*]

2iö GRANADA. Hoc facere oportebat. Sed non erat verum dubium. Nam Archiepiscopus, Dominus Benvenutus Monzón, sicut intellegimus, non solum potuit, sed etiam debuit onera imponere. » « Certissime potuit, quia, secundum ius canonicum, nullam maculam foedam contrahit qui res immobilia et mobilia pretiosa Deo dedicata ad profana usus non applicat, nec exquisitis mediis utitur; sed contra, qui res profanas propriis pecuniis emit, et, ingenti pecuniarum quantitate expensa, ecclesiis praebet, sub pio onere gratitudinis debitae, sicut, exempli gratia, unum anniversarium pro se, quod septem millia scutatorum costat, et alterum pro pia femina, quae octo millia donavit, sub parvo onere iustitiae in favorem Xenodochii pro sacerdotibus. » « Quod autem pertinet ad leges civiles, nihil obstat. Nam supremum tribunal iustitiae declaravit leges de Desamortizatione, quae permittunt perpetuam pensionem pro aliquo hospitali, dummodo nulla bona perenni vinculo afficiantur, quod, prout in nostro casu non est, cum palatia episcopalia et villae, pro ipsorum oblectamento, a Desamortizatione sunt exempta. Praeterea, in nostro casu, vinculum vetitum seu perpetuum bonorum vinculum nusquam apparet: nam, secundum voluntatem testantis, ut supra dictum est, et etiam, secundum solemnem emptionis syngrapham, cum quibusdam adiunctis, Archiepiscopi granatenses hanc villam vendere poterunt. In eo enim publico documento cavetur, quod si quando Archiepiscopus villam venderit, prius Reginam vel haeres eius monere debeat, ut, prae cunctis, ipsa aut haeredes emere possint. » « Unde manifestum est, quod Archiepiscopus defunctus onera villae imponere potuit, quod sane est minus, siquidem potuit quod est maius, videlicet, ipsam vendere. Nec obstat quod Regina villam vendiderit omni onere libera, siquidem nullatenus prohibuit ne in posterum onera imponerentur, sicut iustis de causis factum est; et alioqui, Archiepiscopus emptori onera non imposuit,

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ratione habita.

[*Latin ed. p. 211*]

GRANADA. "It was purchased for 211 *lares*, equivalent to four thousand *scutarii*, but the palace was constructed for eleven thousand." "All of this is confirmed by documentary evidence. For, when questioned by us, the public registrar replied that such things could be recorded in the public property records, either as a pension for a hospital, or as a fixed payment." "Furthermore, it is demonstrated that the illustrious testator could, and indeed should, have imposed such obligations. For, what would be the point of acquiring a small house for his successors in Granada, if, after expending several thousand *scutarii*, he did not provide for its proper use? But, having used his own funds, and not having enough, he obtained funds elsewhere, under a condition, that is, under a true contract with a noble woman, who could, at any time, enforce the legal formalities. Therefore, the testator should have imposed pious obligations, and we should be able to establish these under the protection of the law; this is entirely certain to us." "If there were any difficulty, one might consider the anniversaries, since perpetual memorials are prohibited by law. But, since no property is permanently bound to this, the entire purpose of the law is lost, and therefore, we have seen no obstacle so far, nor do we see one. Indeed, even if some obstacle had arisen, we would consider such a matter of little importance; for who would ever deny that the Archbishop of Granada celebrated two anniversaries, without any prefixed form or tax, for his predecessor, and for the most noble nun, who, with generous generosity, left to him, who worked so hard, a peaceful rest, and the best pleasures?"

DEDUCTIONS OF THE ARCHBISHOP. Conversely, the Archbishop states that the house was purchased by the Ordinary for himself and his successors; and that it was purchased "completely free from any census, burden, or obligation whatsoever"; and then restored "with funds offered without any interest whatsoever"; and nevertheless, the buyer of the property was obligated to pay an annual pension of 1,000 *libellae*, and two anniversaries, "In addition to this, various expenses are added, such as, for example, taxes required by law, and..."

[*Latin ed. p. 212*]

"GRANADA. While paying the wages of laborers and workers, [they] fortified the historical building and the nearby chapel with iron grilles, according to the Queen's instructions, and expended other sums of this kind." "All of these things impose a burdensome and true obligation on this archiepiscopal dignity; much more so, if these burdens are added to the meager revenues of the property, which scarcely reach five hundred gold coins annually." "However, the aforementioned orator has already, of his own accord, ceded alms to the poor in the hospital, according to the pi-

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ous wishes of the deceased Archbishop, and, with whatever means he can, he will willingly give in the future." "If, therefore, the matter is carefully considered, it clearly appears that this property should be counted among the assets of the Church from the very time of its acquisition; which is openly evident from the very wording of the document, in which Augusta Elizabeth sold the property on the condition that ownership could only be retained by the Archbishop of Granada and his successors in the archiepiscopal see and dignity of that archdiocese: therefore, from the very context, it is legitimately inferred that the olive grove and garden were purchased not by the person of the Archbishop, but by the archiepiscopal dignity itself; and so, the deceased Archbishop understood the true and proper meaning of the aforementioned clause, so that, when he was certain of his transfer to the see of Hispal, he immediately sent a general vicar as his legate to that city, where Queen Elizabeth resided at that time, who, desiring to faithfully fulfill the duties of the Archbishop, and eager to retain ownership of the property for life, earnestly pleaded with the Queen to fully obtain this wish of his Prelate through royal will. Then Augusta Elizabeth, though not easily, but with great composure of mind, graciously decreed that the contract document should only be amplified in this clause, that is, she ordered that the ownership of the property should be retained by the aforementioned Don Benvenuto Monzón Martin and Puente until her death: which should only be understood for that occasion; also, the praised Arch-

[*Latin ed. p. 213*]

GRANADA. The aim of this action is to ensure that the transfer of the property is carried out completely in accordance with the previously established norms. Furthermore, in a second written document, it is stated that the seller claims to have sold the property free from any census or burden whatsoever. "It is true that the property was improved by the most esteemed Archbishop, but it must be borne in mind that improvements made not out of necessity, but merely for convenience, are considered voluntary under civil law, and that what is voluntary does not in any way imply a necessity." "Moreover, there are other reasons that strongly oppose this burden, among which it is necessary to mention, above all, the current laws, born of the wickedness of times, which are commonly called emancipatory laws; and these laws do not tolerate any perpetual burdens, or foundations established for perpetuity. From this, it is easily seen that the aforementioned laws currently in force reject the burden perpetually imposed by the Most Reverend Archbishop as a violation of modern law." "Although the Advocate wished to reconcile these two opposing points, the matter is not easy, because the census always burdens the property, which, according to the will of the Royal seller, was sold to the Archbishop of Granada and his successors, free from any pension, census, or burden whatsoever. Therefore, Most Reverend Fathers, another difficulty of no small

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importance arises; if one consults the spirit of the solemn document, if one examines the, so to speak, formal reason of this contract, one finds nothing other than the pious desire of the excellent seller, wishing that the historical property be perpetually retained and guarded by the Archbishops of Granada, as if it were entirely belonging to the dignity of the archiepiscopal office of Granada. And so that no doubt may remain with anyone who wishes to examine the first and second documents, there are letters, kept under the Advocate's custody and originating from the Royal House, in which this very will of the Queen is openly and extensively confirmed. Given these circumstances, that property is..."

[*Latin ed. p. 214*]

214 GRANADA. At the time of acquisition, according to the contract, it must be included among the assets of this dignity; therefore, it seems that no one can alienate, burden, encumber, or subject the property belonging to the Church, without the highest Holy See: by the tenor and teaching of the Bull of Pope Paul II, of blessed memory, which begins: "Ambitiosae cupiditati." "However, difficulties of another kind necessarily arise from the very nature of this matter; but the Orator, fearing to abuse the indulgence of your Eminences, and wishing to avoid speaking at too great length, seeks refuge in your benevolence: therefore, he will briefly explain the matter." "It is of great importance to carefully consider that the tax imposed on this fund, under the aforementioned conditions, constitutes a very heavy burden for the Archiepiscopal dignity of Granada: the principal reason for this is that the revenue from the taxed property, as stated above, amounts to almost one-third of the annual sum to be paid. Thus, this dignity would be perpetually burdened with an enormous injury, as the law says." "It is most regrettable, most eminent Lords, that this archiepiscopal See has, until now, been entirely free from any tax or payment; and that it has been so burdened, especially in these difficult times, in which the Church of Spain experiences no small hardships, and in which prelates and clergy are often deprived of their meager incomes, and of all resources, for a time." "Therefore, the conscience of the orator does not permit this archiepiscopal See of Granada to be burdened and encumbered, which, indeed, a worthy predecessor perhaps did not obtain due to a lack of opportunity; nor does the orator possess sufficient authority to restrain successors from accepting this burden." "It is a well-received doctrine that prelates, with regard to ecclesiastical property, enjoy the use of the fruits by law, as if lacking full ownership, and that they are not permitted to make any changes in it without the permission of the Holy See; otherwise, the orator could validly impose a new..."

[*Latin ed. p. 215*]

GRANADA. 215. The property should be burdened with a charge and

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a new tax if it should, by chance, be increased in value, or if any part of it should become more valuable; and this, of course, will be entirely permissible for all successors in this place, and so on, ad infinitum.

OBSERVATIONS. Firstly, it appears beyond dispute that the garden of laurels, of which we are speaking, has long been in the private ownership of citizens: for it was formerly possessed by certain Emmanuel Parevo Avila, and by the women Emmanuella, Rosaria, and Trinitas Parevo y Reyes; from whom it was purchased by Queen Elizabeth II, as appears from the deed of sale requested in Granada on February 10, 1862. Nor does it matter that it is incidentally stated by the testamentary executors that the house of the village, which today has been converted into the archiepiscopal palace, was the remains of the Franciscan convent that was suppressed; and that perhaps the very building, which is located near the historical laurels, also belonged to it. Indeed, this refers to a remote antiquity, as the very words clearly indicate: "the remains of the Franciscan convent." And this is confirmed by the present Prelate, who, although he strives in every way to include the disputed garden in the census of ecclesiastical goods, nevertheless does not refer to its original nature. Therefore, it seems to be concluded that this garden, whether it was entirely of the Franciscans, or rather only in part, before the purchase made by the Archbishop of Monzón, had long since lost the nature of an ecclesiastical good, and was entirely registered in the records of private property. Furthermore, it is agreed between the parties that the Archbishop of Monzón purchased the garden with his own money, and then restored it, either with his own money, or with money donated by a pious woman, and not subject to any ecclesiastical bond, but belonging to her free property. Therefore, the disputed garden, neither by the nature it had before the purchase, nor by the price of the purchase, has become the property of the Church. However, the present Prelate contends that it has passed into the Church's possession by a special intention and by express will.

[*Latin ed. p. 216*]

216. GRANADA. The matter concerns the buyer and seller, namely, the Archbishop and the Queen. For it is stated in the contract: "Her Majesty sells this garden to the Most Reverend and Illustrious Lord Benvenuto Monzón, Archbishop of Granada, for him and his successors in the episcopate and dignity." From this article of the contract, and precisely from those words "Her Majesty sells... to the Archbishop of Granada, for him and his successors," the present Prelate argues that the aforementioned property was immediately made ecclesiastical and attached to the Granadan See; and therefore, as a consequence, it could not have been retained by Archbishop Monzón when he relinquished the Granadan episcopate, and all the more so, burdened with especially onerous obligations in the transfer. This is the essence of the present Prelate's reasoning. As it is clear, the point from

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which the entire question hangs is whether, from those words added to the sale, "Her Majesty sells to the Archbishop of Granada, for him and his successors," it follows that the disputed property was immediately included in the inventory of the Church's goods and attached to the episcopal See. However, it does not seem to follow from the stated words. For, in the first place, it is one thing to say that the sale and purchase were made for the Church and its episcopal See, and another to say that the sale was made to this Prelate for him and his successors. Indeed, in the first case, if the purchase and sale are made immediately in the name of the Church, it can indeed be considered to have been acquired by the Church immediately, and the purchased goods can be counted among the Church's assets from the time of the contract. But it is not so in the second case. For in the former case, the will of both the seller and the buyer is determined in favor of the Church; and therefore, if the buyer is himself the Ordinary, without any further solemnity, unless special circumstances or contract clauses object, the property is considered to come into the domain of the Church. Whereas, in the latter case, if the buyer, although he is a Bishop, purchases the secular property with his own private funds, for himself and his successors, or, which is the same thing, accepts a sale,

[*Latin ed. p. 217*]

GRANADA. 217 It cannot be immediately concluded that a property has come into the possession of the Church and its successors. This, indeed, depends most on the will of the contracting parties, and especially of the buyer. If the buyer buys and intends to acquire solely as a Bishop and as the Bishop of this see, and therefore, without any further action, the property ceases to be his own and becomes the property of the Church and his episcopal see, it cannot be maintained that the acquisition is immediately and directly for the Church; but if nothing is determined, nothing is defined in the contract, as if in a pledge, then an interpretation must necessarily be made, and it would have to be determined whether the Prelate, by buying, intended to acquire the property for himself and his successors in the same way as for himself and his successors. Therefore, it is necessary to resort to interpretation, because the contracting parties said less than was necessary. Furthermore, the following rule applies: the intention of the contracting parties must be determined from what was proposed to them, *L. 35 De reg. iur.* and *L. 33 De cont. empi.*, from the nature of the act, *LL. 3, 9, 12 De transad.*, and finally, what is most important to us, from what is good and equitable, *L. 13 § ult. De ann. leg.* – Moreover, the contracting parties clearly demonstrated in their deed what they intended to do. Indeed, if the Queen has stated in writing what she understood, the Archbishop of Monzón, both by retaining the property and by making a will, demonstrated that he did not intend to acquire the property for himself and his successors in the same way. This seems more plausible if the circumstances

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are considered. Indeed, when the Prelate of Monzón acquired the garden of Lauri, he certainly had in mind, and the Queen could not fail to know, that he intended to improve the rustic buildings, as he actually did, at his own expense, so that they would become a source of pleasure and rest for the Bishops of Granada. Therefore, the celebration of the contract could not be understood as the completion of the transaction, but only as its beginning, as if it still existed in the initial stage of its constitution. Furthermore, it is known that founders, at the very beginning of the foundation, as well as a donor in an imperfect donation, establish honorable conditions by benefit.

[*Latin ed. p. 218*]

218. GRANATEN. Or, it may be added to a donation, as stated in chapter 23 of *De iurep.* and chapter 11 of *De praeb.* Furthermore, it should be noted that the action of both the Archbishop and the Queen is to be considered of the greatest importance, precisely because it serves to clarify the intention, since it originates from persons who are exempt from all exceptions, and especially from the Bishop, who is responsible for promoting pious works and making donations. However, the nature of the act itself appears to be the same. For if someone purchases a profane property with his own money, even if he purchases it from his successors, it does not seem that, by this very act, he deprives himself of the power, which he has as the owner, to dispose of the property in terms of the manner and form in which he transmits it to his successors. In a single word, a purchase made for the benefit of successors, if considered in itself, means nothing other than the intention to pass the purchased property on to the successors; and this does not imply anything more than a general obligation of transmission, nor does it prohibit a specific determination of the manner. But if a simple purchase made for the benefit of successors implies this, then, *a fortiori*, a purchase made first for oneself and then for one's successors will imply the same. For it cannot be assumed that there is a distinction, without reason, between the buyer and his successors. But what the intention of the contracting parties, and the nature of the act itself, seem to suggest and confirm is precisely this. Indeed, it is unjust that someone who has spent 8,000 scudi of his own money on the purchase of a property, and has, in order to complete the purchase, contributed 11,000, partly from his own resources and partly from a donation that he himself sought, should immediately be prevented from imposing a small charge, for the good of his soul and of the pious institution that he has established, on the grounds that this benefactor has stipulated in the contract that the purchase is not only for himself, but also for his successors. This, in fact, seems so unreasonable that, even if the alleged clause implied this in itself, it would seem that there should be room for a benevolent interpretation or moderation.

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Indeed, « *in summa*... »

[*Latin ed. p. 219*]

GRANATEN. 2i9> "The judge must have equity before his eyes." L. Quod si Ephesi § "Sometimes... The judge must proceed in a case according to the equity of the law." c. Ex parte 13 De off. deleg. Furthermore, it is added that in cases of doubt, favors are to be extended and detriments restricted, according to rule 15 of the sixth book of jurisprudence; to which another rule adds: "In obscure matters, we must consider what is more likely and what usually happens," rule 45 of the same book. This is especially true in the case of donations. Indeed, if it is not certain that a donation has actually taken place, and doubt remains as to whether more or less was donated, the interpretation should favor the donor; Reiffenstuel ad reg. 57 iur. in VI, number 9, because to donate is to lose and relinquish one's own, L. Filius famlias 7 ff. De donat.; but no one is presumed to relinquish their own in cases of doubt, argument I. cum. de indeb. 35 § However, the Archbishop of Monzón, in purchasing property for his successors, donated it to them. It cannot be said that excessive burdens were added to the donation. We are speaking of a property of 87 "ectares," that is, 43 "rubrics," where buildings are located, suitable for cultivation and befitting the Archbishop, for which 19,000 "scutators" were spent in order to purchase and properly adapt them. Considering these facts, the purpose was to resolve the doubt: Whether, and to what extent, the burdens attached to the Monzón property are valid in this case. The Sacred Congregation, after discussion on May 4, 1889, decided to respond: "Affirmatively, in all respects, according to the form of a testament."

FROM WHICH YOU CAN GATHER:

I. According to the rule of law, in obscure matters, one must consider what is more likely and what usually happens.

II. Even if the intention of the parties remains obscure,

RESOLUTION.

[*Latin ed. p. 220*]

5>20 GRANATEN. However, it is possible to deduce, from the nature of the act, from what is good and equitable, that the Bishop made a donation to his successors, through testamentary documents, of lands purchased and of a house renovated, for the use of the Villa. III. It is known that the founders, at the very beginning of the foundation, and the donors, in a donation not yet perfected, can add a benefit, or honorable conditions, to the donation. APUANA MARRIAGE. On June 8, 1889. Session 4, chapter 1, Concerning Reforms. COMPENDIUM OF THE FACTS. On May 2, 1868, in the parish church of the locality of Collegnago, in the Apuan diocese,

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Daniel Pacetti, son of Anthony and Mary Bolzi, was to marry Anne Albert, daughter of John and Marianne Danesi, having previously obtained a dispensation from the impediments. After the marriage was celebrated, the spouses returned to the groom's home, and spent a few days together. However, gradually, the rumor spread in the village that these spouses were related in the third degree of consanguinity. Upon learning of this, the parish priest informed the spouses that they must separate, which they immediately and willingly did, not intending to resume their marital life. Indeed, when the parish priest later insisted that he would lead them to request an apostolic dispensation, they not only refused, but in July 1869, they appeared before the Vicarius foraneus of their district, who resides in Fivizzani, along with witnesses, and solemnly declared that they were free and would reject any revalidation of the marriage. Afterwards, the man left and traveled abroad, while the woman went to Spedigamo, where she took steps to marry another man, with whom it is said that she was civilly joined on January 11, 1880, and with whom she still lives. It is truly most regrettable that, although this woman,

[*Latin ed. p. 221*]

At Pontremoli, driven by the urgings of conscience, she immediately petitioned through the General Vicariate of Sarzana, requesting that no marriage be declared valid between herself and Daniel Pacetti; and subsequently, on May 7, 1882, a decree was issued by the Sacred Congregation, stating that the Bishop should proceed according to the forms of law, upon the petition of the other party, and observing the proper order of justice. Nevertheless, due to the ambiguities in which the court of Pontremoli was entangled, the judge was only able to hear the case on February 3, 1887, and the tribunal was duly constituted. Anne Alberti was summoned and appeared, but Daniel Pacetti was summoned but did not appear, and was therefore declared contumacious; and finally, the parish priest of Colegnago, the parish priest Cyril Ginesi, and the chancellor of the Curia were summoned and questioned. Furthermore, the records included a genealogical chart of the parties, testimonies regarding birth, baptism, marriage, and death in each degree, and a copy of the declaration made by both parties to the foreign vicar in 1869. Considering all of this, the judge declared on November 7, 1887, that the marriage contracted between Anne Alberti and Daniel Pacetti was null and void.

Synopsis of the Dispute: It should be noted here that the matter in question does not concern a question of law, but a matter of fact; and therefore, it was proposed to investigate: I. Whether it can be established that there is an impediment of consanguinity between Daniel Pacetti and Anne Alberti, as spouses; II. Whether it can be established that this impediment has been removed by dispensation; III. Whether the judgment regarding the nullity of the marriage, issued by the court of Pontremoli, should be confirmed or

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overturned. Regarding the first point, the Consultor noted that, according to Gratian's Decretum, under the name of consanguinity, "the relationship of blood" is understood as "the connection of persons arising from the fact that one depends on the other, or that both depend on the same; or it is the bond of persons descending from the same stock, contracted by carnal propagation."

VOTE OF THE CANONIST.

[*Latin ed. p. 222*]

5>22 APUANA: That marriage cannot validly be contracted between blood relatives, and that the contract is dissolved up to the fourth degree inclusive, is derived from Dec. Greg. lib. IV, *De consanguinitate et affinitatibus*, title XIV, chapter VIII. "Therefore, since the prohibition of conjugal union extends up to the fourth degree, we also decree that it be perpetual, notwithstanding any constitutions on this matter previously issued, either by others or by ourselves; and if anyone should presume to marry in violation of such a prohibition, let no length of time defend the marriage." The arguments from which consanguinity is most certainly established are two, according to the law, namely: "The faith of instruments; and the testimony of relatives, or of two witnesses, with the exception of parents." Therefore, the first argument, from which consanguinity is recognized, is the faith of instruments, namely, the parish registers, which, in matrimonial causes, are equated to public instruments by the authority of the Council of Trent, Session XXIV, chapter I, *De Reformatione Matrimonii*; and they fully constitute proof, as Pax Jordanus states, volume 3, *De fide instrumentorum*, number 48. Indeed, the Council of Trent says: "Let the parish priest have a book in which he describes the names of the spouses and witnesses, the day, and the place of the marriage; which he should diligently keep." And in chapter II... "and he should describe the names of those [baptized, etc.]." The purpose of this book, as the Doctors unanimously teach, is that the impediment, whether of consanguinity or of affinity, may be proven, and it fully constitutes proof, as a document of great authority. Let us hear, among other things, what Reiffenstuel says, who in book II, title 22, § 4, *De fide archivii atque scriptorum*, number 127, expresses himself as follows: "Parish registers attesting to baptisms, marriages, or deaths, and the contents thereof pertaining to the office of the parish priest, fully prove—The reason is that, although the parish register is not a public document, that is, written by the hand of a public notary; nevertheless, by the authority of the Holy Council of Trent, the faith and trustworthiness of the parish priest are established for writing such a book; therefore, it is undoubtedly..."

[*Latin ed. p. 223*]

APUANA 223. Fides tali libro adhibenda est. Alioquin, frustra a Concilio

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Generali Paroco impositum esset onus registrandi talia in suo libro, nisi si hoc publice faceret et omnes pleniter probarent. Tanta est auctoritas, quae supradictis parochialibus libris tribuitur, quod, licet alia adsint argumenta, quae consanguinitatem et affinitatem probent, videlicet partium consensus, duo testes omni exceptione maiores, et testes matrimoniorum et baptismorum, tamen in causa Nullitatis Matrimonii 14 Ianuarii anni 1759, ad dubium « an constet de 'nullitate matrimonii in casu' » responsum primo fuit: "dilata, et coadiuventur probationes, et extrahantur fides baptismatum et matrimoniorum." Et sane: si ita non foret, difficillimum esset consanguinitatem, affinitatemque probare, praesertim in quarto gradu. Secundum argumentum, quod a iure statuitur, ad consanguinitatem dignoscendam, est testium depositio, quemadmodum habetur in cap. Ex Uteris 1 De Consang. et Affinit. qui debent esse omni exceptione maiores. "Quo circa mandamus, en iuris verba, quatenus utramque partem ante tuam praesentiam convoces, et facias testes coram te iurare. Inquisita vero diligentius veritate, si per testes circumspectus omni exceptione maiores inveneris, quod primus vir superstitem quarto gradu consanguinitatis attingit, non differas divortii sententiam promulgare." Et Reiffenstuel sequentem tradit regulam ad dignoscendum utrum impedimentum aliquod dirimens existat, lib. IV, tit. XIX, n. 17. "Ut iudex ecclesiasticus vinculum matrimonii dissolvat, debet eidem de impedimento constare per probationem plenam ei perfectam, qualis est quae fit per duos testes omni exceptione maiores." Quinam autem sint testes omni exceptione maiores, designat Glossa in cap. Ex Uteris dicens: "Illi dicuntur omni exceptione maiores, qui repelli non possunt aliqua exceptione." Idem tradunt Barbosa Collect, in lib. 4 Decret, cap. Ex Uteris de Consang. et Affinit. n. 9: Farinacius d. p. 2. q. 62: Gutier De Matrim, c. 44, n. 84: et Leurenius Forimi eccles, lib. II Decret, tit. 2, q. 560, n. 2.

[*Latin ed. p. 224*]

224 In APUANA, having stated all that which the Canonists assign, for the easy and secure determination of whether any impediment of consanguinity or affinity exists between the contracting parties, it is now manifest that it is not difficult to prove that there exists between Daniel Pacetti and Anne Albert a consanguinity in the third collateral degree of equal grade. This is first and foremost clearly demonstrated by the genealogical chart of consanguinity prepared by the Reverend Parish Priest of the Church of Saint Catherine in Collegnago, signed by his own hand, and sealed with the parish seal. It is important to note that in the procedural records, authentic documents are not lacking, which refer to the baptism, marriage, and death of all persons found in the aforementioned chart; nor are there lacking those which refer to the death of the aforementioned, all signed by the hand of Philomen Maloni, Rector of the Church of Collegnago, and sealed with the parish seal. Therefore, since the aforementioned document, taken

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from the book in which the names of the spouses and witnesses, the day, and the place of the marriage are noted, is equated with public instruments, according to the Council of Trent, Decree on Reform of Marriage; and since, according to Reiffenstuel, book II, title 22, § 4, no. 127, everything contained therein pertaining to the parish office is fully proven; and since this proof, which is derived from this chapter, is of such value that it even exceeds the proof by witnesses, and would alone suffice to present a judgment affirming, it is permissible to conclude that there truly exists an impediment of consanguinity in the third collateral degree of equal grade between Daniel Pacetti and Anne Albert, as is evident from the aforementioned chart. The same conclusion follows from the second argument established by law for ascertaining consanguinity, namely, from the depositions of the parties and witnesses, as prescribed in chapter "From the Womb" concerning consanguinity and affinity. And although, as it is said, in law a mule may be an accuser and a witness in the same cause,

[*Latin ed. p. 225*]

APUANA, 225. Reiffenstuel, *lib. 4*, Dec., title 17, n. 15; nevertheless, it is clear that in a matrimonial cause, this can occur, *at least* when it concerns consanguinity or affinity; for the common opinion of Doctors teaches that, in a cause of consanguinity to be proven, even if the parties are witnesses, their testimonies are of the greatest weight. And indeed, the very witness, Anna Alberti, who, questioned under the sanctity of religion, acknowledged the impediment of consanguinity. It is not surprising that the testimony of the other party, namely Daniel Pacetti, is desired. For, having been legally summoned by the Reverend Joseph Bertolini, pro-vicar general specially appointed in this cause, to appear before him for deposition, he refused to comply with the mandates, and was declared contumacious by the same after said citation. But he himself confessed the impediment of consanguinity extrajudicially. Therefore, from the testimonies of the parties, although not judicially obtained from both sides, it results that there exists an impediment of consanguinity between Daniel Pacetti and Anna Alberti. From the witness, Anna Alberti, two witnesses were presented to prove the existence of the impediment of consanguinity, who are to be held in the highest regard, without any exception. The first witness is the parish priest of Collegnagi himself, who, having touched his breast and given the customary oath, asserted that said impediment truly exists, as is evident from the parish register: which, according to Reiffenstuel, *lib. II*, title 22, § 4, n. 127, *COMPLETELY PROVES*, and against this authentic and literal instrument, human testimony is not admitted. The second witness presented by the witness was Master Cyril Ginesi, parish priest of Verrucula of the same Diocese, who, having given the customary oath, asserted the same. Truly, it is clear that the aforementioned witnesses are to be held in the highest regard, because they cannot be repelled by

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any exception, as the *Glossa* in cap. *Ex Uteris* requires: for they are grave persons, to whom faith is deservedly given. Therefore, they are fully deserving of belief, as are witnesses without any exception, according to *Tom. XXII*, cap. CIV, 15.

[*Latin ed. p. 226*]

22β - In APUANA, before the elders; and consequently, from the second argument prescribed by law, it is manifestly clear that there is an impediment of consanguinity between the spouses, Daniel Pacetti, and Anne Alberti. And that the matter truly stands as stated, it appears most clearly from the very confession of the most learned Defender of the marriage bond, the Reverend Father Francis Petriccioli, whose duty it is to uphold the validity of the marriage. He himself openly confessed that there is an impediment of consanguinity between Daniel Pacetti and Anne Alberti, and therefore, there is no marriage contracted by them. This confession, coming from the Defender of the marriage bond, must be given the greatest weight. Regarding the second point, the Consultant states: "Assuming the existence of the aforementioned impediment of consanguinity, if it were demonstrated to us that no dispensation for said impediment was requested or granted, it can be concluded without any doubt that the marriage between Daniel Pacetti and Anne Alberti was, and is, invalid and null. And indeed, if this dispensation had been requested and granted, it would undoubtedly have occurred either before or after the celebration of the marriage; but, as will become clear from what is said, no dispensation was requested or granted either before or after the celebration of the marriage; therefore, the marriage remains in the state of having an impediment of consanguinity that was not dispensed; and consequently, it is invalid and null. And first, the Bishop of Apua asserts that no dispensation was requested before the celebration of the marriage, since this impediment was unknown. The Reverend Father Cyril Genesi, a witness brought by the Plaintiff, asserted the same. The Reverend Father Philomenus Maloni, parish priest of Collegnagi, under oath, and the Plaintiff herself, Anne, also assert that the consanguinity was unknown at the time the marriage was initiated. Therefore, from the testimonies, confirmed by oath, it is most clearly evident that no dispensation for the impediment of consanguinity was requested before the celebration of the marriage.

[*Latin ed. p. 227*]

APUANA 227 Provision had not been made for this impediment of consanguinity either by dispensation, nor even after the celebration of the marriage. Indeed, if such a dispensation had been requested and obtained, without a doubt, the letters of this dispensation would exist in the archives of the Bishop, or of the parish, because, according to Rule 52 of the Canon Law, "No dispensation shall be granted, unless the womb

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is consummated." And the Council of Trent, Session XXII, chapter V, concerning Reforms, states: "Dispensations, whatever authority may grant them, if they are to be issued outside the Roman Curia, shall be issued to the Ordinaries of those who have requested them; and those which are granted gratuitously shall not have their effect, unless they are first, as if by the same, as Apostolic Delegates, summarily and extrajudicially examined, so that the express species of deception or fraud does not appear to be present." Now, these letters of dispensation are not found in the archive of the Episcopal Curia. Therefore, not only are the letters of dispensation lacking in the episcopal archive; but the Bishop himself openly states, up to the day of August 3, of the year 1882, that the dispensation, of which we are speaking, was neither requested nor obtained. The aforementioned letters of dispensation are also lacking in the parish archive, as Mr. Philomenus Maloni, the current parish priest of Collegnago, asserts. From the preceding testimony, three things are clear to us: that a dispensation concerning the impediment of consanguinity was never requested; that the letters of dispensation do not exist in the parish archive; and that it is the common opinion that the marriage of Daniele Pacetti with Anne Alberti is invalid and null, due to the aforementioned impediment of consanguinity. To all of this, another reason is added, which, because of its great importance, cannot be passed over in silence. Here, we are dealing with the request for a dispensation concerning the impediment of consanguinity, so that the marriage, which is invalid and null due to the aforementioned impediment, may become valid; and since it is not the case that...

[*Latin ed. p. 228*]

22g - In APUANA, a request for a dispensation can be made, but this depends solely on the will of the spouses, and the will of the spouses must be sought for this purpose. However, from various testimonies, it is clear that the man was entirely opposed to this request; he stated that he wished to retain his freedom, rather than seek a dispensation. Furthermore, it is recorded in the episcopal Curia of Apua that the aforementioned declaration regarding the non-petition of a dispensation concerning the impediment of consanguinity exists, and the Chancellor, Franciscus M. Varesi, affirms this under oath. The same was testified by Mr. Cyrillus Genesi, the parish priest of Verrucula, who was a witness to the aforementioned declaration. From the aforementioned declarations, confirmed under oath, it is clearly evident that the impediment of consanguinity in the third degree of collateral relationship was not overcome by a dispensation, because not only was the dispensation not requested, but the parties refused to request it, and did not wish to live together freely, nor to proceed with the marriage. From all that has been said thus far, it naturally follows that it is unnecessary to suppose that an impediment existed in the marriage through a

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dispensation granted after the marriage had begun. For this supposition cannot be sustained in any way, since the Holy Penitentiary cannot dispense with a hidden impediment of consanguinity in the third degree "if it is possible to make the impediment public." Given these circumstances, the Reverend Joseph Bertolini, the general vicar of the Apuan diocese, specifically delegated in the case concerning the nullity of the marriage in question, having seen all that was to be seen, and having carefully considered all that was to be considered, invoking the name of God, issued his final judgment, declaring the marriage contracted between Anna Alberti and Daniele Pacetti to be null and invalid. Regarding the third point, the consultant states that the judgment of the Apuan Curia should be confirmed. For this consequence legitimately follows from what has already been proven in points I and II. If it is a certain fact that...

[*Latin ed. p. 229*]

22. APUANA. It cannot, in any way, be doubted that, between Daniel Pacetti and Anne Alberti, there exists an impediment of consanguinity in the third degree of collateral relationship, as the Defender of the Bond himself confessed; therefore, the marriage cannot be contracted, and the contract is void, unless an apostolic dispensation is granted to them. If this necessary dispensation was not requested, either before or after the celebration of the marriage, as has been demonstrated in N. II, it can be concluded, without any fear of error, that the marriage, contracted with the impediment of consanguinity, without a dispensation, remains as it was from the beginning; but from the beginning, it was not valid, due to the aforementioned impediment of consanguinity, not dispensed by the Apostolic See; therefore, it is so even now; and consequently, the sentence regarding the nullity of the marriage, issued by the Apuan Curia, must be confirmed. For, as Reiffenstuel states in book IV, title XIX, number 17: "In order for an ecclesiastical judge to dissolve the bond of marriage, he must be informed of the impediment by full and perfect proof, such as that which is provided by two witnesses, both of whom are older than the parties and free from any exception."

OPINION OF THE THEOLOGIAN. The marriage, the consultant says, which nature dictates and the Republic approves, religion perfects when it has been elevated to the dignity of a sacrament by Christ the Lord; therefore, insofar as it is ordered to the good of the Church, as the Angelic Doctor teaches in book IV, against Genesis, chapter 78, it ought to be subject to ecclesiastical governance; hence, it follows that the Church can, within certain limits, restrict marriage. This power, inherited from Christ, the Council of Trent defined against the heretics in Session XXIV. Therefore, baptized faithful who are entering into marriage must not be subject to any impediment that the Church has declared to be prohibitive; so that, even if it is invincibly unknown by the contracting parties, if this impediment is

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present, the marriage will be invalid, even if consummated a thousand times, as theologians and canonists teach: for impediments stand.

[*Latin ed. p. 230*]

230. The impediments in APUANA are not instituted merely as a punishment, but principally in order that men may be deterred from those actions which obstruct [marriage]. Among the impediments that dissolve marriage, besides those which are established by nature, to safeguard the sanctity of the sacrament, there are others instituted by the decrees of the Church, and especially consanguinity, not only in the direct line, but also in the collateral line, up to and including the fourth degree. And within these degrees, any marriage celebrated is null, invalid, and of no value. It is evident to anyone who considers it even slightly that the impediment of consanguinity has affected the marriage between Daniel Pacetti and Anne Alberti of the diocese of APUANA. For the woman, moved by the dictates of conscience, petitioned the court of APUANA that the nullity of the marriage be declared judicially; and, having obtained this through the judgment of the judge, she will be able, as she promises, to be sacramentally joined to the man with whom she is today illegally living. The Bishop received the petitions with benevolence, and since it is not within the power of the spouses to pronounce the dissolution of the bond, but rather that the same Church, by whose authority they were joined, should free them, he ordered the legal process to be carried out, appointing a judge and a defender of the bond. In the series of procedural acts, nothing appears to be reprehensible, since everything, by the mercy of God, has been carried out according to the bull of Benedict XIV. Although, concerning the examination of the parish priest, something seems to be lacking to me. Daniel Pacetti, although legally summoned, refused to obey, and, as is just, was condemned by the judge as a contumacious person. Witnesses were called, who, under a prior oath, unanimously testified to the notoriety of the impediment, or to the consanguinity of the betrothed. Therefore, considering the other documents, and especially the genealogical chart of both the Pacetti and Alberti families, with supporting testimonies extracted from the parochial books, it became evident, and without doubt, that the betrothed were consanguineous in the third degree of collateral kinship, which even the defender of the bond does not dare to deny, but seeks to argue for the validity of the marriage from elsewhere.

[*Latin ed. p. 231*]

APUANA, the 231st day. Therefore, after having stated what was necessary to state, the judge definitively pronounced that the marriage between Daniel Pacetti and Anne Albert was null and void, because it was celebrated in a degree of consanguinity prohibited by law, without any dispensation having been requested, and indeed, having been rejected by the

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Apostolic See. The Consultor stated that he considered this sentence, issued by the Apuan court, to be absolutely and without doubt to be confirmed, because the entire foundation of the matter consists in determining and ascertaining whether a marriage impediment truly existed, which had not previously been removed by dispensation. If this impediment exists, it necessarily follows that the marriage in question was null and void, as declared by the sentence of the court. Indeed, the bond of consanguinity between Daniel and Anne is clearly evident and openly proven by the genealogical chart of both families, which provides conclusive proof, which we cannot deny. In such cases, the parish registers are decisive, unless there is clear evidence of a mistake; and where consanguinity is involved, the parish books are considered to be entirely reliable, as the Sacred Congregation asserted in 1874 and admitted. Therefore, since it is clearly evident from the parish records that the aforementioned betrothed are in the third degree of consanguinity with each other, their marriage must be declared null. However, the question arises: was such an impediment removed by the Apostolic See? It is not certain; indeed, the betrothed stubbornly refused any dispensation, as the parish priest and the witnesses called testified in unison. Since it is certainly established that there is consanguinity, and it is not established that there was a dispensation for the impediment, a new conclusion must be drawn from the documents presented and the series of proceedings, and the sentence of the Apuan court regarding the nullity must be confirmed. However, as Cosci teaches in book 2, chapter 18, in pronouncing a marriage null, unequivocal, conclusive, and perfect proofs are required; therefore, there is some doubt.

[*Latin ed. p. 232*]

232 In APUANA, during the proceedings, it appeared that a more thorough investigation was required concerning the actions of the parish priest and his examination. The defender did not sufficiently press the matter, nor were the judge or the compiler of the records concerned to inquire further into matters that needed to be more fully discussed in order to remove all doubt. The entire suspicion, or doubt, must be resolved regarding the conduct of the parish priest. The parish priest, Phil. Maloni, was legally questioned and stated the following: 1. He asserted that he had held the office of parish priest in the town of Collegnago since the year 1865; 2. In the year 1868, he blessed the marriage between Daniel and Anne. He presented a record of the celebration of the marriage, and of the subsequent separation; but it would have been preferable if he had presented not a certificate, but a carefully transcribed copy of the entry as it should appear in his marriage register. 3. He testified that, upon discovering an impediment, he had ordered the couple to separate, and that no request had been made to relax the impediment. These are the only things that the parish priest Maloni stated in his sworn examination; but other matters should have

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been inquired of him. And first, concerning the denunciations, which, after a request was made to the Ordinary for a dispensation, were omitted, as testified by the vicarius foraneus Fivizzani. Proclamations are to be made with great care, so that any impediments that may exist may be more easily revealed. Thus, the Council of Trent, Session 24, and St. Ligorius warn: "The parish priest is obligated, before proceeding to the proclamations, to conduct a diligent examination to ascertain whether anything prevents a valid and lawful celebration of the marriage." It is clear that the parish priest Maloni neglected this preliminary investigation; for what is easier to ascertain in a small town than kinship? Why, then, did he omit it? A dispensation from the Ordinary was requested for the three proclamations that should be made in the church. Therefore, the parish priest should have been questioned about the reason for this request, since such a dispensation is granted only for a serious and just cause, and ought to be: "It is not sufficient for a lawful dispensation from all things, from the proclamations, that any obvious and common cause be presented, but a grave, urgent, and most urgent reason is required." Thus, Benedict XIV, in the Constitution *Satis est*. What was the necessity in our case? Neither the parish priest stated it, nor did the judge inquire.

[*Latin ed. p. 233*]

APUANA 233. Truly, if the prescribed inquiries had been made in a small town, it is easily conceivable that not one, or two, but many would have presented an impediment, as happened in the case of those recently married. For the pastor is bound, under a grave obligation, to manifest any impediment between the betrothed, as all theologians teach, whether it is known by the betrothed themselves, or whether it is unknown to them; this obligation arises from the reverence due to the Sacrament, and from the natural obligation to prevent sin in one's neighbor, and from the grave duty of obeying the precept of the Church, which pertains to the common good. Therefore, these matters should have been more diligently investigated by the pastor in his examination, so that some light might be shed upon the matter. We cannot suppose that the pastor was so ignorant as not to know that marriage within certain degrees is forbidden under penalty of nullity, and that it is void. It is more excusable if we say that he was ignorant of the bond of consanguinity between Daniel and Anne. But this ignorance seems scarcely credible in a pastor of a small town after ten years of ministry. And could a pastor, with such intimate knowledge of his flock, have joined together in marriage those who were related by blood, without thinking? Or did he do so because of some hidden authority that he considered it proper to conceal? These things, I believe, should be considered in the examination of the pastor, so that the truth may be more clearly revealed. Furthermore, as I stated from the beginning, since the consanguinity between the betrothed, from the third to the third degree, has been demonstrated

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through a genealogical chart, and no relaxation of the impediment has been requested, the sentence of the Apuan court declaring the marriage between Daniel Pacetti and Anne Alberti to be null, must be confirmed. Indeed, the Bishop of Apua and Sarzana, as well as the Vicarius foraneus of Spedia, earnestly request this confirmation in their letters, and they hope that the scandal may come to an end.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. Daniel Pacetti and Anne Maria Alberti declared that the marriage they entered into in the year 1869 was invalid, and before the pastor and three witnesses, they declared that they did not wish to renew it through a dispensation.

[*Latin ed. p. 234*]

234 In APUANA, there existed a dispensation allowing for separations in marriage, but such separations did not dissolve the bonds between the parties, so that each could subsequently enter into other marriages. Under these circumstances, Anne, who lived a life of service, unexpectedly entered into a civil union with another man. Although she had worked for many years at the court in APUANA, she only obtained a judgment on November 10, 1887, which was consistent with her wishes, and which two most learned consultants, a theologian and a canonist, also deemed to be just; however, this has not been thoroughly proven according to the law. Furthermore, two points needed to be demonstrated: firstly, that Daniel and Anne were related by collateral blood in the line of GRADO; and secondly, that the impediment of consanguinity mentioned had not been lifted by the Apostolic See. As for the first point, the testimonies of baptisms, marriages, and burials were presented, relying solely on the faith of the parish priest, who extracted them from the parochial records. However, it is established that documents obtained from parochial records, as well as from other instruments, are not to be considered valid unless the instruments themselves have been examined by a judge and recognized as complete and genuine, chapter end, on reliable documents; there, "If instruments are requested for a copy because of age, or for another just cause: they must be presented before the ordinary judge or a delegate specially appointed by him; if, after careful examination, he finds that they are not flawed in any way, he will order a copy to be made by a public official, which will have the same authority as the originals." Therefore, the aforementioned testimonies are to be considered of little value, Vindex stated, because the judge did not adequately examine the parochial records together with the petitioner for the marriage. I believe it is unnecessary to dwell on the two witnesses, the parish priest Maloni and the parish priest Ginesi, who were called by the plaintiff to prove the impediment of consanguinity. Indeed, each witness speaks of hearsay, while, on the contrary, it is necessary to testify, according to the form of chapter 47, section 2, on witnesses and testimonies, "that witnesses should testify from their own knowledge or

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from what they have heard from elders through distinct degrees about the natural relationship." There, "Witnesses of this kind—"

[*Latin ed. p. 235*]

At Pontremoli, on the 23rd of the month, with their own proper oaths, confirming that they are proceeding to give testimony in this case neither out of hatred, love, fear, nor self-interest, the individuals are designated by express names, or by a sufficient demonstration or circumspection; and from both sides, single degrees are distinguished by clear calculation: and nevertheless, they conclude their oath, stating that they have received from their elders what they are deposing, and that they believe it to be so. But such testimony is not sufficient, unless the witnesses swear that they have seen the individuals, or at least that they consider them to be related by blood in one of the aforementioned degrees. For it is more tolerable to allow some to be joined together contrary to the laws of men, than to separate those who are legitimately joined, contrary to the laws of the Lord. Finally, it is worth noting that the parish priest of Grado, one of the aforementioned witnesses, reports: I know that two witnesses were examined to prove the freedom of status for obtaining a dispensation from publications, and it was proven that no blood relationship existed; therefore, the requested dispensation was granted by the episcopal curia. The other witness, the parish priest of Maloni, who not only acts as a witness, but also signs the testaments of baptisms, marriages, and funerals, is the one who joined Daniel Pacetti and Anne Albert. Therefore, the existence of the aforementioned impediment, having been admitted for a time, now diminishes the gravity and authority of this parish priest. Although I can freely say that Anne and Daniel are in the third degree of consanguinity. For such impediments are widely relaxed by the Holy See, so great is the favor of marriage, that they are presumed to be removed unless the contrary is proven by apodictic arguments. What, however, remains in the records of the case? There are letters in which the Bishop testifies that these betrothed entered into marriage in the year 1868, and that they did not obtain any dispensation regarding consanguinity. But the Bishop is far from certain, and he doubts the faith of the chancellor or secretary of the curia, who testified before the judge: I inquired within the pending marriage proceedings whether there existed even a request for obtaining a dispensation, but nothing.

[*Latin ed. p. 236*]

236 APUANA. It is stated. Concerning a marriage celebrated twenty-one years ago, it is not sufficient to consider only the pending matrimonial proceedings. Having considered all these matters, the purpose was to determine whether the judgment of the ecclesiastical court of Apuana should be confirmed or overturned in this case. RESOLUTION. The Sacred Congregation, after discussing the matter on June 1, 1889, decided to re-

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spond: The judgment should be confirmed. FROM WHICH WE GATHER THE FOLLOWING: I. When the question concerns a matter of fact, and not of law, namely, whether a marriage should be declared invalid due to a dispelling impediment, nothing more should be done than to inquire into and duly prove the existence of said impediment, and whether it has been removed by an apostolic dispensation. II. The impediment of consanguinity, or the prohibition of conjugal union, is limited to the fourth degree; so that those who presume to marry within such a degree are not protected by the passage of a long time, nor can they claim any validity. III. Two things are required by law to duly prove consanguinity; namely, the authenticity of documents, and the testimony of relatives, or of two witnesses, without any exception for older individuals. IV. The authenticity of documents for determining consanguinity is derived from the parochial registers; which, in matrimonial causes, are equivalent to public documents, as stated in the Tridentine Council, Session 24, Chapter 1, concerning reforms in marriage, and provide complete proof. V. For proving consanguinity or affinity, the parochial registers have the greatest authority; for although the parochial register is not a public document, that is, one written by a public notary, nevertheless, since, according to the decree of the Council of Trent at *Industria*, and the faith of the parish priest at *Electa*, is required to write such a register, undoubtedly, credence must be given to such a register. VI. Another argument for proving consanguinity is the testimony of witnesses; for the law states that it is not...

[*Latin ed. p. 237*]

237 In APUANA, the promulgation of a decree of divorce is to be deferred if, through careful examination of witnesses, all the aforementioned exceptions are found to apply, namely, that the first husband is related to the surviving spouse by the fourth degree of consanguinity. VII. In the matter under consideration, the existence of consanguinity has been proven by two arguments: namely, through the records of the parish book and through the testimonies of the parties and witnesses, considering all the exceptions. THEANENSI. REGARDING THE ALLOCATION OF REVENUES. On June 8, 1889. Session 24. Chapter 15, concerning Reforms. In the cathedral chapter of Theanensi, there were formerly 26 canons, of whom 13 were patrons, and 13 belonged to the older foundation, and were called "of the mass." By the civil law of August 15, 1867, which they call the law of suppression and conversion of ecclesiastical institutions, it happened that thirteen patronal canons, together with the thirteenth "of the mass," were suppressed, and the chapter was gradually reduced to twelve canons, including the dean and other lower offices. Meanwhile, however, the political authority had already twice imposed its laws violently on the administration of the Church. First, on July 7, 1866, it was decreed that from the immovable property of any moral ecclesiastical

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entity, with the exception only of parochial benefices, one-third of the total value would be taken and added to the treasury. But a few years later, the Senate decree of June 19, 1873, in Article 25, at least partially amended this theft and corrected it, stating that throughout the Kingdom, from January 1, the extraordinary tax of one-third would apply only to the revenues of canons exceeding [COMPENDIUM FACTI].

[*Latin ed. p. 238*]

238 TEANO. Octocento florins et, super tali somma, cinquecento florins di benefici. Il reddito derivante da tali assegnazione e dai benefici è costituito dai frutti della pensione o dell'assegnazione stessa, e da qualsiasi somma che venga permanentemente versata per conto del suo ufficio dal patrimonio ecclesiastico e della Chiesa, per soddisfare i desideri dei pii defunti o altri simili scopi. Per stabilire il reddito annuale, fino a un'aliquota di trentunesima parte in cento, si deve anche tenere conto dei redditi di altri benefici e cappellanerie di cui gode il canonico o il beneficiario. Questa disposizione della legge non si applica ai canonici il cui reddito annuale supera le 1600 lire, né ai benefici e alle cappellanerie il cui reddito supera le 800 lire. Tuttavia, la restituzione del reddito che precedentemente era stato sottratto, si è rivelata difficile nel capitolo di Teano. Infatti, solo nel 1886, dopo tutte le verifiche, il tesoro ha comunicato al capitolo che avrebbe provveduto alla restituzione della quota precedentemente sottratta, emettendo un titolo di debito pubblico consolidato che avrebbe prodotto annualmente 1660 lire, e inoltre avrebbe versato 19.196 lire, somma (19.196 lire) a cui si aggiungono i redditi accumulati dall'anno 1873, derivanti dalla quota sopra indicata di 1660 lire, che avrebbero dovuto essere restituiti al capitolo fin dal primo giorno dell'anno 1873; somma che, tuttavia, fino al momento della liquidazione, era stata trattenuta dal tesoro insieme agli interessi. Il capitolo ha accettato questa liquidazione, e non vi è stata alcuna controversia a riguardo; ma vi è stata una grande discordia riguardo alla divisione, sia della somma una tantum di 19.196 lire, sia del reddito annuale di 1660 lire, con otto canonici che sostenevano che questo beneficio dovesse essere riservato solo a loro, escludendo gli altri quattro, mentre gli altri quattro insistevano affinché la divisione fosse fatta equamente tra tutti. La ragione di ciò è la seguente: i canonici di una fondazione più antica, che erano 13, partecipavano a un fondo comune: questo fondo, tuttavia, era diviso in 14 parti uguali, in modo che il Decano, capo del capitolo, aveva una quota doppia, così come una doppia responsabilità.

[*Latin ed. p. 239*]

TEANO. 239. In the past, they took an equal portion from the common fund. However, five of them received a special and additional allowance; therefore, the dean and the other five received more than the rest. Furthermore, in the assessment of the thirtieth part of the income in the year

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1866, which was applied to all without distinction, everyone suffered a deduction proportionally, and no dispute could arise regarding this; but in the restitution that occurred by law in the year 1873, the law did not order that all be restored; but rather, those who were originally canons, or who had previously been subject to the deduction of the thirtieth part, and whose income amounted to 800 livres, or those who were beneficiaries and did not receive an income of 500 livres, were not to suffer a further deduction, and therefore they were to be restored completely in every way; but those who received more than 800 livres were to suffer a deduction in proportion to the amount exceeding 800 livres; finally, those who received allowances of 1600 livres or more were not to benefit from the new law, but were to suffer a deduction on the entire income, and were not to be restored either in whole or in part. Now, in the chapter of Teano, the dean, because of the double portion taken from the common fund, and three other canons who, in addition to the common share, received a special and additional allowance, enjoyed an income of 1600 livres or more from the beginning; therefore, the treasury renounced the benefit of the restitution for these. Two others, who had a special and additional allowance, but a very small one, and all the others who were enriched by only the common income, whom, for this reason, received less than 1600 livres annually, the treasury admitted to the partial benefit of the law. Therefore, the treasury restored the manual sum of 19,196 livres and the annual census of 1660 livres to the common fund, but in favor of these eight canons. However, as soon as the chapter ceased to exist, a dispute arose regarding the division and allocation of either the manual sum of 19,196 livres or the annual census of 1660 livres. The eight poorer canons, in their...

[*Latin ed. p. 240*]

240. THEANBN. Tunc modo concesserunt restituere beneficium, propter hoc quod intentio civilis auctoritatis, cum res titulationis facienda esset, fuerat restituere, et eos tantummodo indemnes voluerat, non alios; decanus autem et alii tres canonici ditiores, contra, praedicaverunt, fiscum, quidquid intendisset, de facto restituisse massae communi; massam autem communem aequo inter omnes esse partiendam; itaque sicut aequo omnes de eius diminutione damnum reportaverant, sic pariter omnes de eius augmento lucrum sentire oportebat. Disceptatio synoptica. Patronus, quem decanus et alii tres canonici sibi elegierunt, decem argumenta pro re sua proponit. Et primum, quod capitulum Theanense, seu pars eius conservata, quae et antiquioris fundationis est, sub regimine massae communis vivit. Hoc probatur: A) ex *bulla* episcopali anni 1579, qua Praesul Maringola univit « eidem capitulo et massae capitulari – eo quod – dicti capituli fructus, in quotidianis distributionibus consistentes, sunt adeo tenues quod ad 24 ducatorum annuorum summam pro portione cuiuslibet canonici non ascendunt. » B) ex relatione visitationis

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a Episcopo Giordano anno 1753 ad S. Sedem peracta, in qua fides fit quod « capitulum constat tribus dignitatibus, decano nempe, cantore sive primicerio, et thesaurario, ac viginti tribus canonicis. Tredecim namque sunt antiquissimae et immemorabilis fundationis; reliqui vero ab anno 1613 instituti sunt.... Primi unum conflant corpus, unamque mensam capitularem, adeoque appellantur Canonici de massa, illiusque fructus aequaliter inter se partiuntur, soli decano, ratione suae dignitatis, parte duplici assignata. » C) probatur ex immemorabili nec hucusque impugnata consuetudine, quae quanti sit valoris supervacaneum dicere est. B) Demum, ex testimonio ipsius civilis auctoritatis, quae tum in conversione bonorum, tum in partiali restitutione trigesimae.

[*Latin ed. p. 241*]

TEANO. 24.1 He ordered that the census be inscribed with the favor of the common mass, not of individuals. Furthermore, 2. The laws by which the chapter of Teano is governed, and which it has had since its very foundation, cannot be changed without a very serious reason, as Pitonio teaches in Alleg. 47, n. 13, concerning disagreements with the common body: "The laws of the foundation must be observed inviolably," and Alleg. 50, n. 6, adds: "That the Supreme Pontiff intends to observe religiously whatever the most pious benefactors have established in the disbursement of their money for pious works; and that he never overturns, nor intends to overturn, the agreements of foundations without a very serious reason." Therefore, 3. It is clear that civil authority lacks the right to change the status of pious institutions and their fundamental laws, which is clearly demonstrated and definitively found in the Constitution of Santa Maria, where Innocent III established, among other things: "To laymen, there is no attribute of power over churches and ecclesiastical persons, but rather an obligation to obey; and if anything has been established by them of its own accord, which also concerns the benefit and favor of the churches, it has no validity unless it has been approved by the Church." Moreover, very recently, in the Syllabus, under number 42, this proposition was condemned: "In the conflict of laws of both powers, civil law should prevail." Since there is no right of the republic over the Church, and since elsewhere the capitular laws of the Church of Teano command that all canons receive the same benefit from the common mass, it is certainly inappropriate for civil authority to order that a different distribution be made among the canons, and that the recently obtained increase be divided only among eight, and not among all. Even more so, since, according to the theory of Loschi, De iur. univ., page 3, chapter 16, a. 8, the common property of Teano belongs to the entire university, and not to individuals within the university, so too, the common mass of Teano belongs to the entire chapter, and not to some. Indeed, just as those who have the right to offer their own particular property claim absolute ownership of it, so conversely, Acta, Tom. XXII,

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fase. CCLVI, 16.

[*Latin ed. p. 242*]

II.2. Those who participate in the common fund have a right and obligation to share in it equally. There is no need to fear the intervention of the state; for there is a genuine declaration from the highest tribunal of Rome, the Court of Cassation, dated July 6, 1887, in the case of Caltagirone, in which it was formally declared that civil law diminishes the number of canonries in cathedral churches with regard to ecclesiastical property, and that it does not concern the intrinsic organic constitution of the chapters, which is beyond the competence of civil authority. And it must also be understood that portions of the common fund succeed in the place of endowments; therefore, when the government wishes to help only some, and to increase their quotas, it is necessary that the quotas of those who receive endowments increase more than those of the common fund, and not the other way around. To this, the advocate responds, noting that portions of the common fund are indeed said to stand in the place of endowments, but by a fiction of law: but true endowments are only considered, as Pitoniuin teaches, in *Decretum Ecclesiasticum*, 17, number 4, <when the common property of the church is divided, and from it, for example, eight or ten endowments are established, and for one, so many vines, so many rents, and for another, so many fields, so many canons are assigned.> But, since the entire common fund is ordered to be distributed daily, this assertion that quotas succeed in the place of endowments appears to be a mere and erroneous fiction, according to what the Sacred Congregation of Bishops and Regular Canons decreed in Avellino on November 20, 1660. Indeed, civil authority has often recognized that the common fund belongs to all, that is, to the entire community, as recently happened in the case of Fermo, according to the judgment of the second-degree judge of Macerata, in which, on July 24, 1888, the appeal in favor of the chapter of Fermo against the government was dismissed, because the government, by its laws, assigned the common fund to distinct and separate...

[*Latin ed. p. 243*]

THEANEN. Two hundred and forty-three ecclesiastical benefices were not restored for the individual canons. And justly so; for in chapter [reference to a document], concerning ecclesiastical matters, it is written: "Civil law, when it specifically concerns the Church or its goods, has no validity, because the Emperor cannot send the scythe into another's field." This point is clearly defined by the Sacred Congregation of the Council in a decree of June 26, 1866. Indeed, that decree stated and requested: "The Regium Demanium, according to the law promulgated on August 15, 1867, is entitled to thirty out of one hundred parts of the revenues of both the chapter's endowment and the individual canonical

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benefices. Subsequently, by law promulgated on June 18, 1873, six of the poorer benefices were fully restored, which had been taken away previously; and to the chapter's endowment, only as much was given as would suffice to reduce the annual income of the aforementioned six benefices, together with their fruits and the portion due to each canon from the choral distribution, to the sum of 800 Italian lire. The chapter, until the immediately preceding month of June, distributed the fruits of the restored endowment among the six titulars of the poorer benefices, according to the provisions of civil law and in the proportion prescribed by the same, but as an addition to the choral distribution, which each receives in common with the others, and also observing all that which is required by canon law for choral distributions." However, the chapter's endowment was established and maintained in this cathedral, so that a single portion belonging to the entire chapter has existed from the year 1354; indeed, for this very reason, the chapter was involved in a dispute in which the Regium Demanium sought to seize a portion of the entire endowment that belonged to the benefices which it had suppressed, in order to maintain the aforementioned number of twelve. Having considered these matters, the chapter has come to doubt whether it has acted correctly in distributing the fruits, which, although restored with a condition, are in their nature part of the entire endowment.

Therefore, the chapter humbly petitions the Sacred Congregation:

[*Latin ed. p. 244*]

244. QUESTIONS.

I. Given the aforementioned circumstances, can the portion of the mass revenue restored and assigned by civil law to benefit six of the poor be lawfully distributed in the manner prescribed by that same law?

II. And, if the answer to the first question is affirmative, should it be distributed according to the form of choral distribution?

III. If the answer to the first question is negative, [the petitioners] implore a merciful remedy for the past situation, and, considering the poverty of those to whom the funds are to be given, they request the faculty to manage the matter as they have done up to now, and to continue doing so in the future.

To which the Ordinary responded: Regarding questions 1 and 2, provision will be made in the third [question]. Regarding question 3, [the Ordinary] granted the request, having heard the prayers, and spoke with the Reverend [Father]. Furthermore, the patron observed that from this granted grace, it was clearly demonstrated that the chapter had not had the right to allow certain individuals to receive preferential treatment, to the detriment of the common mass, even though, for the benefit of these

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same individuals, a specific portion had been assigned to the common mass. After these remarks, regarding question 4, the patron added that in the administration of the common mass, an implicit agreement of a society is involved, so that profit and loss equally affect each individual. Ulpian, L. 29, *Pro socio*, § 2 and § 3, *Institutiones*, ibid. If this were not the case, and one suffered a loss while the other gained a profit, the society would become *leonina*, that is, completely unjust. Furthermore, 5. all canons, upon receiving a benefice, swear to observe the constitutions and customs in force in the church. Moreover, these prescribe that all revenues be divided equally among all canons, with the exception of the dean, who receives a double portion. Therefore, 6. it happened that two of the eight canons who were in opposition, namely, the penitentiary Stavolone and the canon Caprio, although they had initially expressed a contrary opinion, were now, guided by their conscience, recognized their error, and explicitly confessed that the increase in the mass revenue should be ceded equally to all. And although these two canons, and especially Caprio, subsequently requested a dispensation, considering their...

[*Latin ed. p. 245*]

THEANEN. 245. Considering the circumstances, it is understood that the division, as it was previously made from the estate, should be excepted, so that it is not taken again by the chapter through another means, after having been restored to it with a sorrowful heart; however, the advocate replies that this exception is entirely without value, and that the fear is empty; for the law commands that the reduction of one-thirtieth be made only once, and once made, it is not repeated. Furthermore, it is added that civil authority, in regulating the reduction, has understood only this: to take something from the ecclesiastical patrimony only once, and certainly not to subject ecclesiastical persons to an ordinary tax each year from the revenues of the benefice. This is clearly apparent from the very law concerning the reduction: and the Supreme Roman Court of Cassation, on April 9, 1882, defined it in these terms: "The tax of thirty in a hundred does not have the character of an ordinary imposition, but constitutes an extraordinary increase of the ecclesiastical patrimony for the benefit of the civil state." If, therefore, civil authority considered the revenues of individual canons in making the restitution, it did so for its own convenience. From now on, since the restitution is made to the common fund, and not to individuals, it matters little to the government how the increased sum is divided; indeed, in letters of July 1, 1886, the Minister of State seems to have left the matter to the judgment of the chapter. It seems just that what belongs to the common fund should be added to the common fund, even if the government attributes this to individual canons in its calculations; which, indeed, the Holy Office and the Royal Court in Anagnina defined very clearly on December 21, 1888 (1). In addition, the advocate further requests

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that the Dean and three other canons be considered to have been subject to the entire reduction by accident: the Dean, because he was honored with a double quota; the three canons, because they enjoyed a special stipend; but the Dean, because of his double quota, is burdened with a double burden compared to the others; and the three other canons are increased by a special stipend so that they may perform burdensome and special offices.

(1) You have this question on page 156 of this volume.

[*Latin ed. p. 246*]

246 TEANO. are paid. But it is unjust that they should not seem to bear the burdens, and that they should not feel the benefit that others experience. And this injustice cannot be excused by saying that the dean and three others enjoy a special emolument, either by granting or by a double share: because, since this emolument is given to fulfill special duties, it does not seem to be counted. The patron, in the last place, argues that this should be maintained even more strongly, if the absurdities that would result from the contrary doctrine were considered; for if only eight canons were to divide among themselves the sum of 1660, it would happen that they would receive almost the same amount as the dean and the other three canons; which does not seem equitable, since the dean and the other three prebendaries bear greater, indeed almost double, burdens. In these circumstances, the advocate demands that both the sum of 1660 livres and the manual sum of 19,196 livres, formed from retroactive assessments, should be ceded and divided equally among all; and since, after the civil judgment, the eight canons had presumed to divide this manual sum among themselves, they must also, upon the termination of the suspension, return the improperly received money. DEFENSE OF THE EIGHT CANONS. He who speaks in the place of the canons says that it is sufficient to refute all the arguments presented from the opposite side, namely, that what the government restored did not come from any property or estate that had been omitted, since all the goods of the chapter had been converted, and whatever was subsequently found was added to the common fund to increase the shares of each; but from a reduction of the tax, or from the remission of that diminution which was first imposed indiscriminately on all, and then restricted only to some, namely, those who had an income of more than 1600 livres. Moreover, since in the chapter of Teano, four canons reached, and even exceeded, this income, while the remaining eight did not, the reduction of the tax, or the remission of the diminution, was and should be made solely in favor of these four, and not of the others; and therefore, at that time...

[*Latin ed. p. 247*]

THEANEN. 247 acts of the public census, concerning which the first doubt is raised, then the sum of 19,196 documents, which represents the

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accumulated proceeds from that census from the year 1873 to the year 1886, and which the government had retained up to that time, concerning which the second doubt is raised, were to be yielded in favor of eight poorer canons, and not of richer ones, and in fact, they were yielded. And indeed, this is demonstrated first by the civil law of June 19, 1873, which specifies who should benefit from the reduction of the tax, and who should be excluded; then by the decree of the Prefect of the public treasury, sent to the chapter in a letter, in which it is declared that only eight canons have the right to receive what had originally been deducted from their portions; and finally, by the testimony of the opponents, who in the aforementioned pleading, presented to the Sacred Congregation of the Council, openly professed the same. Therefore, the advocate concludes, with a single blow, the arguments constructed by the prebendary canons are demolished, since they are based on the assumption that the restitution of the sum and the reduction of the tax were granted to all the canons, and not only to eight, by the government; which is entirely contrary to the truth. The opponents, he says, are seeking a loophole, since, in order to profit at the expense of the eight canons, they resort to the words in which the government chose to express itself when referring to the census acts and the accumulated documents, 19,196, not to the eight canons, but to the chapter, stating that all members of the chapter indiscriminately should enjoy what was restored to the chapter; for it is presumed that it was originally deducted from the entire body. But this is incorrect. Indeed, one must not pay attention to the words, but rather to the reason that motivated the government to restore the sum, a reason which the four richer canons are too eager to ignore. Furthermore, it is clearly established that the tax does not burden the entire body, but rather individual portions, after they have been divided from the body. This is so true that each person is burdened unequally, for those who receive a larger income suffer a greater reduction, paying the full amount on documents exceeding 1600, while those who have a smaller income are required to pay the tax only on what exceeds 800. Therefore, the common body...

[*Latin ed. p. 248*]

248. THE RENT remains unchanged, for each individual, as before, receives the same portion according to the capitular constitutions; but after it has been divided, each one pays the tax according to the strength of his income and the manner prescribed by civil law. Hence, the theories by which societies are governed are not entirely applicable in this case, for since the tax does not affect the common fund, but rather the individual portions, each one's portion either diminishes or increases. Furthermore, the reason why the government restored the sum of 19,196 livres, and why it inscribed a public deed in favor of the chapter, is that which is declared in the judgment rendered by the civil tribunal against the canons. There,

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it is stated: "The Demesne, considering the discord already arising within the chapter regarding the distribution of said sum, decided, in order to absolve itself from all possible responsibility, to inscribe a public deed in favor of the chapter, as is customary in similar cases, and to entrust the procurator with the task of distributing the aforementioned sum according to the agreed-upon settlement." The inscription of the public deed represents the portion that ought to remain within the fund, since it concerns not only the present beneficiaries, but also those who may be called to the benefices in the future, in the event of a vacancy or loss. The inscription of the public deed in favor of the chapter does not infringe upon the rights of those who enjoy the benefit of the reduced tax, since, for the present, the written income must remain in favor of those for whose exclusive benefit the partial reduction of the tax was made. With these premises established, the following questions must be resolved: I. Whether the portion that the government had previously deducted due to the 30% tax must be ceded in favor of all the capitulars, or rather, only of eight in this case. II. Whether the fruits of the same portion, accumulated from the year 1873 to the year 1886, which the government has recently restored, are to be divided among all, or rather, only among eight canons in this case.

[*Latin ed. p. 249*]

THEANEN. 249 RESOLUTION. The Sacred Congregation of the Council, after deliberation on the matter on June 19, 1889, decided to respond as follows: To I, affirmatively to the first part, negatively to the second. To II, affirmatively to the first part, in proportion to what is due to each, negatively to the second.

FROM WHICH THE FOLLOWING ARE GATHERED:

I. Whatever pertains to the Mass of the Chapter, if for any reason it is diminished or increased, must tend to the detriment or benefit of all the canons of the Mass.

II. It is equitable and just that all the canons of the Mass should equally share in the profit resulting from an increase, just as they had suffered a loss from the seizure by the Demanio on the common property of the Chapter.

III. Civil authority entirely lacks the right to change the laws of a pious foundation, since the very Pontiff intends to religiously safeguard whatever the pious founders have established for the disbursement of their funds.

IV. Therefore, if laymen, of their own accord, establish something that also concerns the benefit and favor of the Churches, it has no validity unless it has been approved by the Church.

V. Consequently, it is futile for the Demanio to order a different distribution among the canons who have a common Mass; because this is forbidden by the laws of the Church, and because the ownership of any common

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fund remains with the university, not with the individual members of the university, who are all bound to observe the common share.

VI. In the administration of the common Mass, a contract of association is implicitly contained; by which means that profit and loss equally affect each individual in solidum; for a leonine or unjust association would result if one suffered a loss and the other a profit.

[*Latin ed. p. 250*]

250 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF MELITE. TAXATION OF THE SEMINARY. Dated June 21, 1889. SUMMARY OF FACTS. In the Diocese of Melite, landowners have, from time immemorial, customarily paid a half-tithe, deducting expenses, amounting to three scudi for every hundred, to the Seminary. The Monial Order, as well as the Monastery of Saint Peter, of the Benedictine Order, located in Notabile, were also subject to this burden; and for this reason, from ancient times, they have paid twenty gold coins annually, according to the strength of their patrimony, for this purpose. However, on the one hand, the revenues of the Seminary have been greatly diminished, while, on the other hand, the revenues of the Monastery have increased for several years to the annual sum of 37,500. The Procurator of the Seminary, having offered a humble petition, presented a document to the Apostolic Administrator on October 24, 1886, asserting that it was just and equitable that the Monastery should pay a half-tithe to the Seminary, not as in previous times, but according to the strength of its actual revenues. Upon receiving this document, and after hearing the account of the Procurator of the Monastery, the Apostolic Administrator, recognizing that the requests of the Procurator of the Seminary were based on truth, issued the following decree on March 24, 1888: "Concerning what has been stated, we grant the Petitioner the faculty of collecting annually the sum of three scudi (Maltese currency) for every hundred, which is one-third of the revenues of the Monastery, pertaining to the six thousand scudi." Furthermore, we desire that the Monials be aware of the payment of this contribution. The Monials protested unanimously twice, defending their rights against this decree; but, despite all this, the Apostolic Administrator demanded fifteen pounds sterling from the Procurator of the Monastery for the Seminary; when—

[*Latin ed. p. 251*]

MELITEN. The aforementioned sum represents the average tenth, which, according to the cited decree of March 24th, the Monastery was obligated to pay to the seminary. The nuns, finding the Administrator's actions regarding this matter burdensome, appealed to the Holy Congregation of Bishops and Regulars, requesting that the aforementioned decree be revoked, since it had not been issued in accordance with the law. A Synopsis of the Arguments. WHAT APPEARS TO FAVOR THE NUNS.

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From the nuns' perspective, it was considered that the Holy Council of Trent, in Session XXIII, Chapter 18, concerning the reform of pensions, had these two things in view: namely, that those who pay the pension should not be unduly burdened, and that a revenue should be provided for the seminary that is sufficient for its support, and not an excess. Pope Benedict XIII adhered to this disposition of the Council of Trent, as is evident in § 6 of his Constitution *Creditae Nobis*: "But if, in any diocese, the revenues of the seminary, if any there be, and also the benefits previously attached to it with effect, and the fruits of small convents suppressed, when applied (for we intend these unions of benefits, and these applications of the fruits of small convents to be firm) by means of such a tax for the erection and maintenance of the seminary, are not sufficient to provide for the needs of each diocese and of the students, and not for pomp and luxury, then, and in that case, etc." These legal principles have been brought forward because it appears that the tax to be paid by each benefit, once established according to the norms of the Council of Trent, cannot be further varied, if it has been deemed just and sufficient. Furthermore, it was considered that the Fathers of the Council of Trent, desiring to provide for the erection and maintenance of seminaries, decreed that the goods of episcopal mensal stipends, then those of the Chapters, and finally of other benefits, should be taxed.

[*Latin ed. p. 252*]

252 MELITEN - And in order that these matters might be settled, they finally wished that such taxes be applied also to the goods of Convents and Monasteries. Furthermore, considering that the Meliten Seminary is truly in need and burdened with debt, it appears that this burden of meeting the Seminary's needs should first fall upon the Episcopal table, then upon the Chapter, and upon the other possessors of benefices, and finally, upon the Monasteries; and therefore, these [benefices] should be taxed before the Monasteries of Religious are obligated to pay such a tax; especially if these Monasteries are found to be in relative poverty. Indeed, that the Monastery of the Religious of St. Peter, although possessing some goods, is burdened with debt and is found to be in poverty, is not a matter of doubt, as those things pertaining to the condition of the Monastery are brought forth by the Procurator himself. Therefore, the Most Reverend Chapter reports that the Monastery cannot be burdened with further obligations, since it would be obliged to incur new debts in order to satisfy the necessary expenses for the sustenance of the Religious. THE SEMINARY APPEARS TO BE POOR. On the other hand, it has been observed that the Supreme Pontiff Benedict XIII, in the aforementioned Constitution concerning the decrees of the Council of Trent, Session 23, chapter 18, on Reform, prescribed that a tax for the Seminary should be imposed, not only on all benefices, but also on the goods of Regular Canons; except for those which had been expressly

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exempted by the Holy See. Furthermore, in § 4 of the same Constitution, he prescribed that such a tax should not be less than three scudi, nor greater than five, for each hundred of annual revenue. In § 5 of the Instructions, which the praised Pontiff wished to be communicated to the Bishops of Italy and the adjacent islands along with a Pastoral Letter, in order to resolve the questions that might arise in determining the annual revenue, he commands that the annual revenue for determining the contribution or tax in favor of the Seminary should be that which remains, after deducting only the necessary expenses for the collection of the fruits; and in order to determine...

[*Latin ed. p. 253*]

MELITEN. Regarding the 25th year, only those burdens should be considered which were imposed before the Council of Trent. The Sacred Congregation of the Council, in the matter of the Mass tax and the Seminary tax, on December 17, 1836, in response to Question XI, "Whether, in determining the annual value of benefices, it is necessary to consider a calculation over a period of ten years in such a case, etc.," responded: "Affirmatively." From this response, it is understood that, in determining the value of a benefice, one should not consider a fortuitous increase in revenue in one year or another; but rather, a calculation of revenue over a period of ten years should be made. Hence, it appears that, whenever such a fortuitous increase does not occur, but arises either from an increase in the quantity of goods or from a new source of income, the tax in favor of the Seminary which is prescribed should also be increased. And this is argued by § 4 of the aforementioned Instruction, in which it is cautioned that Ordinaries and all others to whom the burden of paying the tax to the Seminary is assigned, are obliged to pay the same both in civil court and in ecclesiastical court, and that, in the event of resistance, the particular Congregation appointed by the Supreme Pontiff will compel the recalcitrant to comply with the demands of justice. Therefore, it does not seem equitable that, in the case of the Religious of [a place name], who for many years have received a considerable income, either from an increase in goods or from the cessation of feudal dues on the territory commonly called the Abbey, they should also pay only a small sum of 20 florins annually for the tax paid to the Seminary, which, as mentioned above, is in very grave need. And this is all the more so because, as § 15 of the aforementioned Instruction observes, without Seminaries, the Religious would lack suitable spiritual directors and confessors. These matters having been presented to the wise examination of the Fathers, the following question was proposed: "Whether and how the decree of the Apostolic Administrator, issued on March 24, 1886,

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by which the Religious of St. Peter in [a place name]..."

[*Latin ed. p. 254*]

254 MELITEN. Those who are obligated to increase the tax in favor of the seminary are bound to do so, whether the case warrants confirmation or rejection. RESOLUTION. The Sacred Congregation of Bishops and Regular Canons, after careful consideration, gave the following response on June 21, 1889: The decree of the Bishop is to be confirmed. FROM WHICH THE FOLLOWING ARE DERIVED: I. According to the Constitution of Benedict XIII, which begins "Creditae Nobis," the tax in favor of the seminary is to be imposed both on all benefices and on the property of Regular Canons; except for those benefices or properties which have been expressly exempted by the Holy See. II. This tax must be neither less than three scudi, nor more than five, for each one hundred of annual income. III. The income to which the tax is applied is that which remains after deducting necessary expenses for the collection of the fruits, and after deducting burdens imposed before the Council of Trent. IV. In determining the annual value of benefices, no account should be taken of fortuitous increases in income in one year or another, but a calculation should be made over a period of ten years. V. The tax in favor of the seminary constitutes a true debt, which must be paid by those burdened, both in the civil forum and in the forum of conscience. VI. In the diocese, the Administrator Apostolic confirmed the decree, because it was beyond doubt that the annual income of the Monastery of St. Peter had increased to the extent that one-third of its income amounted to six thousand scudi. FROM THE DECREE OF THE SACRED CONGREGATION FOR INDULGENCES, for the City and the World; in which another Indulgence is added to the prayer to St. Joseph (1). His Holiness Pope Leo XIII, earnestly desiring that prayer be offered to the Most Holy Patriarch Joseph, son of the Virgin Mary (1), this prayer is found in this volume, page 117.

[*Latin ed. p. 255*]

From the Sacred Congregation for Indulgences, 25: The devotion to [the Blessed Virgin] should be fostered with greater zeal, and her most efficacious patronage should be proclaimed, especially in these times when the Church of Jesus Christ is more fiercely attacked by her enemies, through Encyclical Letters issued on August 15, 1889, concerning the recitation of the Most Holy Rosary, which the Holy See itself decreed should be recited throughout the entire month of October. To these prayers, the aforementioned prayer to Saint Joseph has been added, which is appended to these letters. Furthermore, the same Holiness has already granted an Indulgence of seven years and seven quarantines to all the faithful who add this same prayer to the public recitation of the Rosary during the month of October; and in an audience held on September 21, 1889, by the motion of the under-

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signed Secretary of the Sacred Congregation for Indulgences and Sacred Relics, the same Holiness deigned to add another Indulgence to this prayer, applicable even to the deceased, which may be gained once a day by all the faithful, who, at least with a contrite heart, recite the aforementioned prayer privately. This [Indulgence] is valid forever, without any brief being required, in spite of any contrary provisions. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on September 21, 1889. For the Most Eminent and Most Reverend Lord Cardinal Cristofori, Prefect. Aloysius, Cardinal, Bishop of SABINA. L. gjj Saint Alexander, Bishop of OENSIS, Secretary.

From the Sacred Congregation of the Index: Decree, Feast Day, June 14, 1889. The Sacred Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord Pope Leo XIII and the Holy Apostolic See, concerning the Index of books of pernicious doctrine, and their condemnation.

[*Latin ed. p. 256*]

256 FROM the Sacred Congregation of the Holy Office, concerning the examination, purging, and permission of works throughout the Christian Republic, it has commanded, and commands, that the following works, condemned and proscribed by the Sacred Congregation of the Universal Inquisition, be placed on the Index of Prohibited Books: *Synopsis Iuris Canonici prout olim erant et prout nunc sunt*, by Hieronymus Fiore, Canon of the Greater and Motherly Church, under the title of the Most Holy Apostles Peter and Paul, in the town of Cusano Mutri, Diocese of Telesia. Naples, from the Perrottian Printing Press, 1886. — Decree of the Sacred Office, April 4, 1889. *Il Rosmini — Enciclopedia di Scienze e Lettere*, edited by a Council of Directors composed of writers accredited in the various branches of knowledge. Milan. — Decree of the Sacred Office, May 29. Therefore, no one, of whatever rank or condition, shall dare to publish or, having published, to read or retain the aforementioned works, wherever they may be, and in whatever language, but they must be handed over to the Ordinary of the place or to the Inquisitors for heresy, under the penalties indicated in the Index of Prohibited Books. These matters, having been reported to the Most Holy Pope Leo XIII by me, the undersigned, Secret Index official, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome, June 14, 1889. Camillus Maria, Cardinal Mazella, Prefect. Hyacinthus Frati, of the Order of Preachers, Sacred Congregation of the Secret. Place for the Seal. June 17, 1889. I, the undersigned, Magister Cursorum, testify that the aforementioned Decree was affixed and published in the City. Vincentius

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Benaglia, Magister Cursorum.

[*Latin ed. p. 257*]

257 APOSTOLIC LETTERS, in the form of a Brief, by which Peter Aloysius Mary Chanel is permitted to be called by the name of the Blessed, and his relics are presented for public veneration. LEO XIII. FOR THE PERPETUAL REMEMBRANCE. Just as the Christian religion, from its very origin, has been strengthened by the blood of countless martyrs, so too, by the counsel of divine wisdom, it has flourished through the ages, equally nourished by the same blood, so that its divine truth might always shine with new light, piercing the eyes of all men, and so that the followers of Christ might embrace it with greater tenacity and hold it more dear. And those who, almost before others, confirmed the Christian doctrine through their steadfast endurance of death, were those who had proclaimed it through the preaching of the divine word, watering the tree of faith, as it were, with their own blood, rather than with word and toil. The long history of the ages clearly demonstrates this, and the marvelous conversion of almost the entire world to the Christian faith. But so that nothing in this our age might envy the ages that preceded it, divine providence has preserved it, so that in these recent years, the light of the Gospel has reached the farthest regions of Oceania and those men separated from all the world, through messengers of the divine word, who, following in the footsteps of the ancient Apostles, desired to affirm the doctrine of Christ, even with the shedding of blood. A most noble purpose was fulfilled by the most outstanding of heroes, the venerable servant of God, Peter Aloysius Mary Chanel, whose life was an example, and whose death was a glory to the Christian name. He was born in the village of Cuet, in the diocese of Bellic, on the twelfth day of July, in the year 1803, and from his youth he exhibited such innocence of life, as his subsequent conduct confirmed. Having been initiated into the sacred orders, called by God, he was distinguished by zeal for the faith, devotion, modesty of spirit, gentleness of manners, abundant charity towards the poor, and other excellent virtues, and he presented himself as an example of all-powerful virtue to the ministers of the ancient Church, so that those who were most closely associated with him found nothing in him that could be even slightly reprehended, and the Bishop of Bellic demonstrated in no uncertain terms how highly he esteemed him. Indeed, he first entrusted him with the office of parish priest, and then with the prefecture of a smaller seminary; in these offices, he won the love of all, and the virtues with which a priest is endowed.

[*Latin ed. p. 258*]

258 It is fitting that he was born, and it has been solemnly testified that he consistently exhibited the most perfect example. But God called him to greater things. After thirty-three years, having given his name to the

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Society of the Marists, to which this Holy Apostolic See had entrusted missions in Oceania, bidding farewell to all, not held back by his mother's love, nor by the affection of his homeland, he willingly and gladly departed from France to those distant shores, devoted to the Antistite Pompallier, the Vicar General. After a voyage of ten months, in the year 1837, he arrived at the island of Futuna in Polynesia, and there, remaining alone with a lay companion, among the Missionary Societies scattered throughout the other islands of the region, he spent his time learning the language of the island, walking throughout the island, seeking out infants near death, so that he might cleanse them with the waters of baptism and send them to heaven. But as soon as he had mastered the language, he steadfastly devoted himself to converting the king of the people, of whose hospitality he had happily availed himself for two years. The king, who was also the people's high priest and held supreme power from that very priestly dignity, perceived that Peter Aloysius's words undermined superstition, and, concerned about the diminution of his authority, first turned his love into suspicion, and then into hatred. Therefore, the king drove the servant of God away from his land, depriving him of sustenance and all assistance. Unmoved by this, the evangelical worker provided for himself through manual labor and toil; but the barbarian people, enemies of the Christian name, destroyed everything, intending to either starve him to death or force him to flee. Those who lived on the island of Futuna at that time, whether natives or foreigners, testified to what he endured, and to the alacrity and fortitude with which he pursued this most difficult ministry, under such great peril; his constant companion, the one who was always with him, testified most of all; and the very chronicles testify, in which the servant of God recorded day by day the history of the nascent Church. Never discouraged by labors, never overwhelmed by adversity, always steadfast in dangers, in distresses, in tribulations, he never lost heart, and constantly devoted all his strength to bringing souls who were sitting in darkness and in the shadow of death to Christ through the light of the Gospel. Nor did his labors cease to be fruitful. Many listened to the teachings of Christianity, and their frequent gatherings with Peter Aloysius brought about a great change in their morals. But then, a monstrous rage arose, which, when it became known that the king's own son had been received among the catechumens, burst forth into slaughter and destruction. Therefore, a conspiracy was hatched to destroy the religion along with the priest.

[*Latin ed. p. 259*]

LETTER 259. Those furious instigators, seeking to utterly destroy, first invade the homes of the faithful, inflicting grievous punishments and spreading discord. Then they hasten to Peter Aloysius, and upon finding him alone at home, they brutally assault him in a horrifying manner, striking

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him down in Asti, and then, while he lies prostrate on the ground, they dispatch him with a sword. Thus, this most acceptable sacrifice was offered to God, according to the very manner in which victims are slain; thus, the good shepherd, to whom a cruel death was violently brought, received it with the greatest joy for the sake of the flock; thus, the renowned first martyr of Oceania, on the twenty-eighth day of April in the year 1841, passed away to heaven, adorned with glorious blood. Shortly thereafter, a most terrible death befell the king, his brother, and several other persecutors, which was considered by all to be a punishment inflicted by divine justice for their crimes. But this illustrious martyrdom did not produce late or meager fruits; scarcely five months had passed since the martyrdom of Peter Aloysius, and the entire island, already inclined towards the Christian truth, eagerly awaited the arrival of a priest, who, fully expounding the mysteries of the faith, would add the entire population to the family of Christ through baptism. It is truly remarkable that the very author and instigator of the murder, who was also a relative of the king, was, shortly afterward, struck down by a disease, and, as if by divine grace, with profuse tears, he earnestly requested forgiveness for his heinous crime, and then, miraculously healed by God, he performed all the necessary rites, enduring the martyrdom he had so relentlessly inflicted, of which he had been both a witness and an author, giving testimony that could not be more clear, along with the other executioners. What a marvel of divine wisdom and goodness was added to this death, for when he foresaw his own approach to death, he ordered himself to be transferred to the very place where Peter Aloysius had suffered martyrdom, and he wished to die there, expiating his guilt, where the servant of God had been cruelly slain. Thus, the illustrious example clearly demonstrated that the blood of martyrs is truly the seed of Christians. Nor were heavenly signs lacking, which adorned the glory of the martyr with a new light. Therefore, after a verbal process, which the Apostolic Prefect of Futuna was eager to establish, and after other authentic documents were transmitted by the Apostolic Vicar of Oceania to this our Most Holy City, and after all that is necessary in such investigations had been presented, and after consultation with the Congregation of Sacred Rites, Pope Pius IX, recollected, our predecessor, on the twenty-fourth day of September in the year 1857, signed the commission for the introduction of the cause. Therefore, after the Apostolic acts were completed, and after other matters were properly resolved, and after the signs, or miracles, which occurred through the intercession of this Venerable servant...

[*Latin ed. p. 260*]

260 Letters were presented to God, along with the testimony of martyrdom, and the cause of martyrdom, after a threefold examination for the truth. We declared, by the decree of the same Congregation of Sacred Rites, dated November 25th of the preceding year, that these signs, as well as

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the martyrdom and the cause of martyrdom, were established. It remained to be seen whether the Most Reverend Fathers of the same Congregation, Cardinals, considering that, as stated above, the martyrdom and the cause of martyrdom were approved, and that there were many signs and miracles illuminated and confirmed by God, could safely proceed to grant the honors of Beatification to the aforementioned venerable Servant of God: and they, in a general meeting held before Us on the eve of the Ides of March of the current year, unanimously responded that it could safely be done. However, in so important a matter, We hesitated to open Our mind, until, with fervent prayers, We sought the assistance of the Father of Lights. Having done this with great diligence, finally, on May 30th of the same year, We pronounced a solemn decree stating that it was safe to proceed to the solemn Beatification of Peter Aloysius Mary Chanel. Since this is the case, moved by the prayers of many holy prelates, and also of the Cardinals of the Holy Roman Church, together with the unanimous votes of the entire Congregation of the Marists, We, by Our Apostolic Authority, and by the force of these letters, grant the faculty that the aforementioned venerable Servant of God, Peter Aloysius Mary Chanel, priest of the aforementioned Society of Mary, be henceforth called "Blessed," and that his body, and the relics thereof, although not to be carried in solemn processions, be presented for the public veneration of the faithful, and that images of him be adorned with rays. Furthermore, by the same Authority, We grant that the Office and Mass of the common martyrs be recited for him, with proper prayers, according to the rubrics of the Roman Missal and Breviary, which We have approved. We grant that the recitation of this Office, and the celebration of the Mass, may take place within the boundaries of both the Diocese of Bellic and the Apostolic Vicariate of Western Oceania, as well as in all the temples of the religious houses of the Society of Mary, by all Christians who are bound to recite the canonical hours on the 28th day of April; and that, with regard to the Masses, all priests, both secular and regular, may come together in the churches where the feast is celebrated. Finally, We grant that the solemnities of the Beatification of the aforementioned venerable Servant of God, Peter Aloysius Mary Chanel, be celebrated in the aforementioned temples with the Office and Mass of a double major rank; which We command to be done by the Ordinary within the first year after the aforementioned solemnities are celebrated in the Upper Hall.

[*Latin ed. p. 261*]

LETTERS 26: In the portico of the Basilica of the Vatican, a celebration has been held. Notwithstanding the constitutions, and the Apostolic ordinances, and the decrees concerning the prohibition of cults, and all other matters whatsoever that might be contrary. We wish that the copies of these letters, even those printed, should have the same full faith in discussions, even judicial ones, as would be given to the signification of Our will, which

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is shown in these letters, provided that they are signed by the hand of the Secretary of the Congregation of Sacred Rites, and are sealed with the seal of the Prefect. Given in Rome, at Saint Peter's, under the Fisherman's Ring, on the sixteenth day of November, in the year 1889, in the twelfth year of Our Pontificate. M. CARD. LEDOCHOWSKI.

ON THE TWENTY-EIGHTH OF APRIL, ON THE FEAST OF BLESSED PETER ALOISIUS MARY CHANEL, MARTYR:

O God, who adorned Blessed Peter Aloysius Mary, Your Martyr, with extraordinary gentleness, burning charity, and invincible constancy, in order that he might preach the Gospel: grant us, we beseech You, that adhering to his footsteps, we may hold fast to the faith which we profess, even unto death. Through our Lord.

SECRET PRAYER:

This sacrifice, O Lord, which we offer in honor of Blessed Peter Aloysius Mary, may it constantly inflame our hearts with the fire of Your love, and may it prepare rewards for those who persevere in the promises. Through our Lord...

AFTER COMMUNION:

Nourished by the bread of Angels and infused with heavenly sweetness, we humbly beseech You, O Lord, that through the example of Blessed Peter Aloysius Mary, Your Martyr, we may learn to despise all earthly things and to love heavenly things. Through our Lord...

[*Latin ed. p. 262*]

262 DECREE: In the Apostolic Letters, in the form of a Brief, intended for prompt dispatch, concerning the attainment of the formal Beatification of the Venerable Servant of God, Peter Aloysius Mary Chanel, a Martyr, Priest of the Society of Mary, it is prescribed that proper prayers be added to the Office and the Mass, for common recitation in honor of the new Blessed, by all those to whom the faculty is granted in the Brief to recite the Office and to celebrate the Mass; the Sacred Congregation, making use of the special faculties granted to it by the Most Holy Pope Leo XIII, having reviewed the aforementioned proper prayers, revised by the Reverend Father Augustine Caprara, Promoter of the Sacred Faith, at the humble request of the Reverend Father Claudius Nicolet, priest of the aforementioned Society of Mary, and Postulator of the Cause, benignly approved them, and granted that they may be recited by all those to whom the Office with the Mass has been granted, after the formal Beatification has been completed. Notwithstanding any contrary provisions whatsoever. On September 11, 1889. : RAPH. Card. MONAGO L. $ S. VINO. NUSSI S. C. R. Secretarius.

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FROM THE HOLY CONGREGATION OF THE COUNCIL OF WŁADISŁAW, CONCERNING MARRIAGE. On June 8, 1889. Session 24, Chapter 1, concerning the case of Maria Hedwiges Komierowska, who, having remained a widow after the death of her first husband, Bronikowski, from whom she had also borne three children, contracted a second marriage, which she entered on November 29, 1879, in the church of the Capuchins in Cracow, with the military man Stanisław Bojarski.

SUMMARY OF THE CASE.

[*Latin ed. p. 263*]

WŁAĐISLAVIENSE. 263 With most unfortunate results; for shortly thereafter, discord and disagreements, which grew greater day by day, ruined the conjugal union. According to the husband, the cause of this was the difference in character and the discord in marital dealings; but if you listen to the wife, it stemmed from the husband's impotence; for, although he repeatedly attempted marital acts, but with fruitless and dishonorable efforts, he repeatedly brought the wife to a grave infirmity; and finally, after a year and a half, the wife fled from the husband, and shortly thereafter, in the month of November of the year 1881, she challenged the marriage on the grounds of impotence, and requested that it be annulled by the ecclesiastical court of Władysławów-Kalisz. The ecclesiastical judge, granting such a request, judicially examined the plaintiff and the defendant, and then ordered that their bodies be examined. And so, two doctors, Joseph Rymarkiewicz and Bronislaus Wojciechowski, first examined the husband's body themselves, and then, along with three midwives chosen by the court and properly instructed, examined the woman in the customary manner. Three other doctors followed, who again examined the husband's body, separately from the previous ones, by order of the court. But the judgment of the experts was not unanimous; of which more will be said later. A sixth doctor, D. Zarewicz, was also present, who, in a written testimony, stated that he had "treated Stanislaus Bojarski for a long time for male impotence." And shortly thereafter, supplementing the previously presented testimony, he testified that "Stanislaus had suffered from male impotence even before the marriage, and from the course of the disease, I believe that this impotence is incurable." Finally, five witnesses presented by the plaintiff were heard, but they reported nothing about the cause of the impotence, but only about the discord between the betrothed. With these things considered, the "Władysławów-Kalisz" court rendered its judgment on June 30, 1882, which, however, was unfavorable to the plaintiff, and confirmed the marriage; therefore, the woman appealed to the metropolitan court of Warsaw; but even this could not help the woman, and on May 19, 1884, the court upheld the judgment of the first instance

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in all respects.

[*Latin ed. p. 264*]

264. WŁADISŁAWA AVIEN. However, this woman, not broken in spirit, appealed to the Holy See through the Archbishop of Warsaw, as if to a court of the third grade, but it was decided on July 4, 1885, that there was no basis for the appeal. Again, insisting through the same Prelate, she requested that her petition be admitted as a complaint, and that "a supplementary investigation of the cause be conducted before the episcopal court of first instance, and after its completion, a new judicial inquiry be requested." But on May 29, 1886, it was decided: "The petition has been considered; and inasmuch as the petitioner does not agree with the Reverend Defender of the Marriage Bond, acting ex officio, regarding the vote." And indeed, since the woman did not agree, finally, from an audience of the Most Holy Fathers on June 27, 1887, this decree was issued: "Having considered, etc., to the Bishop of Kalisch, who, after a preliminary new investigation, both regarding the alleged non-consummation of the marriage, and regarding the causes for a dispensation, in accordance with the form prescribed by Pope Benedict XIV, with the faculty even of delegating others, should ascertain the facts and transmit the proceedings to the Holy See."

Thereafter, the process was again conducted in Kalisch; the woman was heard again, and the man was heard again, who furthermore promised that his witnesses would be present before the court. But subsequently, he did not do so, nor, although legitimately summoned to undergo a new personal examination, did he appear again; therefore, he was declared contumacious by the judge. The woman, on the other hand, presented her witnesses; some of whom were in Kalisch, while two, by delegation, were questioned in Cracow. Among these was that doctor, Zarewicz, who had previously sent his testimony in writing. With these proceedings, the Bishop of Kalisch sent the case to Rome, together with his letter, which concluded as follows: "As for me, I am persuaded that the alleged causes are true, and that the petitioner deserves to obtain a dispensation from the Most Holy Fathers regarding her marriage contracted with Stanisław Bojarski."

[*Latin ed. p. 265*]

WLADISLAVIEN. 265. Concerning the Deception of the Syiioptics: DEFENSE OF THE WOMAN. The first advocate of the actress sought to demonstrate, with merit and with just cause, against the sentences of the first and second instances, that a new inquiry had been granted with restitution to the previous state. For it was not necessary to seek, as was done, proofs that rigorously demonstrated absolute impotence, since the nullity of the marriage must also be decreed on account of relative impotence; nor is the virility of the man to be considered in the abstract with regard to the value of the marriage, but in relation to the woman

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whom he has taken as his wife. In the matter now before us, it suffices to cite Sánchez De Matrim. Disp. 93, n. 3, who argues thus: "Because the absolute and total impediment is with respect to the absolute marriage, just as the relative and particular impediment is with respect to the particular marriage: just as, therefore, the former invalidates the entire marriage contract, so too does this invalidate the particular one." Furthermore, it is clear from previous proceedings that this relative, antecedent, and perpetual impotence had been undoubtedly proven, both from the expert opinions of physicians and from the confession of Stanislaus himself. For, under the guise of a disposition of his members, he did not deny his impotence. He said: "I suppose the cause to be that my genital parts are not suited to those of my wife." The physicians, moreover, graphically describe the miserable condition of Stanislaus's body and organs, showing him to be afflicted with anemia, with nerves dissolved, consumed by venereal diseases, and tainted by the vice of onanism; hence, the atrophy of his very spermatozoa afflicted him. Hence, both the two physicians who examined the bodies of both spouses in a comparative judgment, and two out of the three doctors who separately examined Stanislaus, defined his impotence as relative, antecedent, incurable, and perpetual. The third doctor, indeed, proposed hypothetical doubts concerning certain circumstances; but these could easily be dispelled if the process had been properly completed, and finally, he himself concludes that he acknowledges the physical impotence of the man to carnally go with Hedwige.

[*Latin ed. p. 266*]

266. WŁADISŁAW. Therefore, the judges of the first and second grades proceeded with undue harshness and rigidity, deciding as the basis for their judgment, "that in cases of doubt, one must rule in favor of the validity of the sacrament." Even more so, when dealing with cases of impotence, the opposite theory must be applied. Let the words of Coscius, *De separ.*, book 3, chapter 2, paragraph 386, be a witness: "For, since we are dealing with the introduction of a presumption and an injury to the sacrament itself, the rule proceeds directly in the opposite direction, namely, that in cases of doubt, one must rule in favor of the exclusion of marriage, as the Abbot, Felinus, Hostiensis, Monaldus, *de Iustis*, the Rota, and others, rightly distinguish, from the very reason that, in the external forum... it is more tolerable and honorable... to dissolve a marriage, than to give, under the name and law of marriage, an occasion for incontinence, and to foster a continuous sin." All hesitation, however, could easily be dispelled if the medical expert, Zarewicz, had been formally questioned, according to the decree of the Sacred Congregation of the Council, dated August 22, 1840: "If a complaint concerns impotence, expert physicians, whom the spouses have consulted, must be questioned." Furthermore, if the aunt of the plaintiff, Sadowska, who had heard the woman's complaints

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about Stanisław's impotence from the very beginning of the marriage, had been questioned. Then, the advocate proceeds to prove that now, through evidence, the nullity of the marriage, due to the cause of impotence, is fully demonstrated. Indeed, of the two physicians who, in the first proceeding, conducted a comparative examination of the bodies of both spouses, the first pronounces this judgment: "Under oath, I testify that Stanisław Bojarski undoubtedly suffers from physical impotence; that this physical impotence preceded the marriage, and is relative to Hedwig Bojarska, his wife, and is permanent. Hedwig Bojarska, on the other hand, enjoys excellent health." The second physician concurs regarding the relative and antecedent impotence, although he is silent about its permanence, which he seems to have considered as original and absolute. Both, however, deny that the causes of this impotence are solely antipathy and hatred, that is, moral causes, but admit that physical causes also exist.

[*Latin ed. p. 267*]

WLADISL AVIEN. 267 acknowledges the reasons for this deficiency. Both indeed attest that he suffered not only from "nervous dissolution" and "anemia of the highest degree," but also from a venereal infection and testicular atrophy, consuming him, so to speak, entirely. Furthermore, it is clear from Leopoldien, December 15, 1887, that atrophy is a true emaciation, which cannot be removed by surgical operation, nor compensated for by medical arts, and which renders erection either completely impossible or so insufficient that marital union becomes impossible. Besides these two, there are three other doctors who, under oath, separately examined the man's body; of these, the first and second, after conducting the most minute investigation, affirmed without doubt Stanislaus's impotence, attributing it to many causes: 1. the vice of onanism; 2. the prevalence of genital diseases, the signs of which are evident in his organs; 3. all kinds of anemia and nervous dissolution; 4. extreme antipathy, indeed, an irreconcilable hatred towards his wife. Hence, the first of them, Doctor Wilcewski, states: "It is certain that physical impotence preceded the marriage of Stanislaus Bojarski, which was contracted on November 29, 1878," and: "This physical impotence, as in the case of Stanislaus Bojarski, is permanent or perpetual, and cannot be cured by either medical or surgical art." The second doctor repeats the same. As for the third, although he does not entirely agree with the others, which demonstrates that he independently and not by suggestion expressed his opinion, he nevertheless does not deny a relative impotence, which he attributes to a lack of a stronger stimulus towards his wife. However, the doubt that he raised through abstract considerations, as to whether the impotence preceded the marriage, is easily dispelled by the testimony of the doctor who treated Stanislaus, Zarewicz, who, in the first instance, declared extrajudicially that Stanislaus "had suffered from impotence even before

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the marriage, and from the course of the disease, I believe this impotence to be incurable." But later, when questioned judicially, he stated that he had taken charge of Stanislaus "regarding the impotence of coition." And he adds: "Indeed, he was impotent..." From the nar-

[*Latin ed. p. 268*]

268. WLADISLAUS AVIENUS. "Concerning the reasons and expressions of the Most Reverend Boiarski, I could conclude that this man, if he showed some fear regarding the consummation of marriage with the Most Reverend Brouikowska, must also be impotent with respect to other women." Furthermore, "the judgment of the esteemed physician Battistini, of this city, who, with scientific and conscientious observation, declared: that he considered Stanislaus Boiarski to be impotent, that this impotence was incurable, and that marriage should be avoided, so that no marriage should be entered into by him." It should be added that, when impotence is discussed, it is always considered, according to the general rule, to be permanent and pre-existing; Reiffenstuel, *lib. 4, tit. num. 32. "If there is doubt as to whether impotence existed before marriage, it should be presumed to have existed before marriage;" to which Engel, *lib. IV, tit. 15, num. 9; Ursaya, part. 1, discept. 12, n. 248, agrees, arguing from the teaching of Sanchez, *De Matrim., lib. VII, disp. 103, n. 1. And concerning its permanence, the strongest presumption arises from the fact that this "inability... will increase in the future, in an age in which the power of procreation weakens and noticeably diminishes day by day, according to the common saying: 'He who is not able today, will be even less able tomorrow.'" De Luca, *Decis. 11, n. 18; Jacond, *Dictionnaire de médecine, Paris 1865. No difficulty can arise from a youthful age and an apparently regular form; for even if it is granted that a man, completely anemic and with virile powers destroyed, possesses a regular bodily structure, this does not exclude impotence, which arises from an intrinsic defect. In this matter, the most eminent, both ancient and modern, doctors are in agreement. Thus, Cocchius, in *discept. phis. Anat. § 4: "Although the external configuration may be blameless, it does not exclude a defect in the internal structure," and § 12: "nor does it prevent us from saying that the external appearance of the penis may seem healthy, while the internal part is corrupted." Marchangelus follows him, *Dissert, physic. § 6, and Barzellotti, *Medicina legale, cap. 3, n. 1. Of the many things that could be cited to confirm this, it suffices to mention the resolutions of the Sacred Congregation of the Council of Trent, Neapoli-

[*Latin ed. p. 269*]

WLADISLAVIENSIS, 269, dated April 24, 1858, in which the marriage was annulled, forbidding the man from entering into any other marriage, although he appeared to possess, externally, characteristics of virility, and

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was even called by experts "a model of virile power." Therefore, a judgment of impotence must, a fortiori, be rendered in this case, since it concerns a man, not merely one whose strength is exhausted, but one who more closely resembles a corpse than a virile person; but he who, moreover, suffers from such a deficiency in his member that he himself laments, "My member does not correspond in length." Furthermore, this should be considered among the principal external signs of impotence, as Zacchias Quaestiones Medicae, leg. tom. 1, lib. 3, tit. 1, qu. 5, n. 12 states. Add to this the disturbances of onanism and the exhaustion resulting from all kinds of venereal diseases, and the lack of erection and impotence must be considered certain, even if we disregard any opinion of physicians. Moreover, impotence is demonstrated by the medications that the man requested from Dr. Zarewicz before the marriage, and later from Dr. Ostrzyski; which provides strong evidence of impotence, as noted by numerous other learned authors, Ursaya, tom. 1, part. 1, discept. 12, n. 144 seq. Thirdly, it is proven by the man's own confession, who, before the examining physicians, stated that he lacked virile erection, a confession which he had already made to his family physician. Thus, the physicians Zarewicz and Ostrzyski, the latter of whom reports, found Stanislaus "very weakened and impotent for conjugal acts, which I repeat, according to his own confession." Hence, fourthly, he could only engage in acts contrary to the sanctity of the conjugal bond, to the detriment of his health, as the woman precisely states, and as the words of a certain girl wonderfully confirm, who, as the witness Ciésielski reports, responded to Stanislaus, who was urging her to sin, "I will not, because it torments me so much." Furthermore, impotence is demonstrated by public opinion, which...

[*Latin ed. p. 270*]

270. The alleged adultery of Władysław of Vienna is confirmed by the testimony of seven witnesses. Thus, the noble man Donel states: "Władysław led an immoderate life; I knew him even before his marriage to have been consumptive and weakened. This was the general opinion; everyone in Konin knew him. Immediately after the marriage, it was known to everyone that Lady Bojarska had received a consumptive husband." Furthermore, as Celestine III states in his decree concerning witnesses, "A violent presumption is demonstrated by the agreement of reputation, especially when this is not said to be hidden, but rather is proclaimed by many as manifest," as observed by Menochius in *De arbitrio*, book 2, section 103, number 10; and by Ursaya in volume 1, part 1, discussion 12, number 136. Finally, the quality of the persons involved adds weight, with the sworn testimony of seven witnesses and the support of other witnesses. All testify that the woman is pious and religious, and with a unanimous vote, they declare that they have a moral conviction that she confessed the truth, and that she has committed neither falsehood nor perjury. Furthermore,

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she herself decisively confesses under the faith of a double oath: "I am absolutely certain that I never fulfilled the marital duty with Stanisław Bojarski." This is particularly important, because while, on the one hand, the woman's piety suggests her veracity, on the other hand, her age, her long conversation with her husband, the bearing of children, can make the judge more certain that she was not subject to error in giving this testimony. This is confirmed by the deposition of her aunt, Maria Sadowska, with whom the woman complained about her husband's impotence from the very beginning of their marriage. Moreover, further evidence is added by the illnesses that the woman suffered due to aroused and unfulfilled carnal desire; for which, at the command of a doctor, she sometimes had to separate even from her husband. On the other hand, the husband is widely reported to be devoted to luxury, and not very religious, and moreover, he is found to be a liar, as he affirms, with equivocations, that he fulfilled the conjugal act eight or even more times at night, while at the same time he confesses that he did not penetrate his wife's vagina. Moreover, it is reported that Stanisław did not produce witnesses of seven, as, according to the defender, in the aforementioned question.

[*Latin ed. p. 271*]

WLADISLAVIEiX. 271: Regarding impotence, it is not required that there be testimony from the side of the one who denies the impediment. Sanchezii De matr. disp. 109 n. 13; Ancharani et Reiffenstuel, in the chapter "Laudabilem," repeat the teaching of Ferraris, v. Matrimonium, art. VI n. 45: "If one spouse denies, and the other affirms, impotence, then the fourteen witnesses are not required, but seven suffice, and these are to be used only on the side of the one who affirms." This has, it seems, been confirmed in practice by the Sacred Congregation in Neapolitana, March 31, 1710, and in Ianuen:f, June 16, 1866. From all of this, the advocate concludes that a moral certainty regarding impotence can be held, which differs from a physical certainty only in its object, because one investigates the material order, while the other investigates the moral order, but in effect, they are of the same value. Hence, it has often been sufficient for the Sacred Congregation to grant a dispensation concerning a marriage that is valid but not consummated, without a physical investigation, as in Gandaven, December 17, 1845; in Parisien, March 28, 1851, and June 26, 1858; Casnadien, January 31, 1863, and Tergestina, December 11, 1876. (1). Having reached this point, and maintaining that the marriage is considered to be incompletely consummated due to the husband's impotence rather than being null, the advocate proceeds to present the reasons for the dispensation, recalling that the Bishop enumerated seventeen motives for the dispensation, and in particular, the husband's very impotence and the most severe treatments, namely, beatings, threats, and an unjust proposition of money. These reasons are confirmed by judicial witnesses,

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who not only speak of the impotence, but also of other very serious vexations and causes of hatred, of which more will be mentioned later by Thaddaeus Ciesielski and Veronica Stragli u scka. Furthermore, even the doubt regarding impotence provides a most honorable and just reason for an apostolic dispensation, so that the conjugal chamber may not be defiled with obscenities, to the detriment of temporal and eternal salvation. Ursaya, vol. 3, part. 2, n. 103; De Luca, De matrim, disp. 7, n. 7. (1) This is found in Vol. X, 375.

[*Latin ed. p. 272*]

272. WŁADISŁAW. Item, Schmalzgrueber, in libro 4, n. 19, titulus 141; Ursaya, disputatio 7, n. 76; Pyrrhus Corrado, in *Praxi disp.*, libro 8, cap. 7, n. 3, docent, et Sacra Congregatio, per suam praxim, confirmavit, quod aversionem gravem animorum et cohabitationem molestam possunt esse causae canonicae dispensationis. Unde non immerito Episcopus, in litteris suis ultimis, actricem pro gratia commendavit.

ANIMADVERSIONES DEFENSORIS VINCULI. Ex altera parte, defensor vinculi notat, primo, quod unicum punctum ad disputationem allatum sit, utrum Stanislaus sit viribus iners. Etenim Edwiges est mater trium liberorum, et duobus, a medicis qui eam per obstetrices inspexerunt, sanitatem suam confirmata est, et ad maritalem unionem prorsus idonea. Praeterea, in confessis, coniugi duodeviginti menses insimul fuisse, et idem maritalibus actibus pro viribus vacuisse. At si quaestionis punctum ad hoc unum, nempe ad viri impotentiam, reducatur, iam ex medicis ne unus quidem Stanislaum naturali impotentia affectum censet. Siquidem primus respondet: ”Stanislaum Boiarski supradictae impotentiae physicae non a nativitate esse obnoxium, sed morbum hunc esse accidentalem.” Alter medicus: ”Supradicti defectus probant sine ullo dubio Stanislaum Boiarski carnaliter cum mulieribus esse copulatimi.” Tertius: ”Descriptae superius impotentiae physicae Stanislaus Boiarski a nativitate non est obnoxius.” Quartus: ”Quo tempore impotentia physisica Stanislai Boiarski sit orta difficile est determinare.” Ultimus peritus: ”Origo sic determinatae impotentiae physicae Stanislai Boiarski ad hoc temporis momentum est referenda, quo hi motus antipathiae ac odii in uxorem suam apud Stanislaum exurgerent; quando autem hoc fuerit, determinare nequeo.” Accedit quod impotentia, quam accidentalem periti vocant, non sit absoluta ad omnes mulieres, sed relativa, ex testimonio duorum medicorum qui utriusque sponsi corpus inspexerunt. Quin imo nec relativa impotentia explorata un-

[*Latin ed. p. 273*]

”WLADISLAWIEN, page 273, states that one of these two witnesses testified as follows: ”The physical impotence of Stanislaus Boiarski, in relation to his wife, cannot be entirely denied; although it cannot be proven by

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physical facts. The act of carnal copulation is a purely physiological act. Therefore, in a man with sufficient strength and at a young age, physical impotence may seem doubtful. For this reason, I repeat that the physical impotence of Stanislaus Boiarski, in relation to his wife, is only probable, but not certain and absolute. The art of physiology and medical observation provide many examples, so to speak, of sexual antipathy between spouses, although this antipathy is not due to defects in their constitution." To this, another of the three doctors who separately examined Stanislaus's body, Dr. Drecki, adds: "Based on the physical condition of Stanislaus Boiarski's genital organs and the defects I observed through sight and touch, I cannot affirm that Stanislaus Boiarski is certainly and undoubtedly subject to physical impotence. In my opinion, Stanislaus Boiarski's physical impotence is neither entirely certain nor undeniable, because it is related to the unfavorable mental states of Stanislaus Boiarski in relation to his wife, and the nature of these mental states is neither known to me nor is it known." Furthermore, it is said that Stanislaus stated that his genital organs were not suited to those of his wife; although, as testified by Fleury in *Trait de thérapie*, Paris 1866, page 1025, fertilization can still occur. And, according to the testimony of the three experts in the case, "the shortness or narrowness of Stanislaus Boiarski's, or any man's, member, in relation to any depth of the vagina or uterus, can never be an absolute impediment to impregnating a woman." Moreover, it is said that a disease of the liver, by which Stanislaus was allegedly affected at one time, can lead to impotence; for Dr. Drecki testifies: "A liver disease cannot be the cause of such a specific physical impotence." *Acta*, Volume XXII, page 257, 18."

[*Latin ed. p. 274*]

274. WŁADISŁAW AVIEN. Moral causes are presented as an impediment to potency, with no better evidence than the testimony of B. Battistini, who was called to advise the woman in her case. But neither can aversion of the soul be presented as a cause of moral impotence, since, according to the testimony of the domestic woman Veronica Struglinska, there existed "between B. Bojarska and her husband a relationship that outwardly signified great love between them." Furthermore, regarding the medical experts, although the majority of them favored the judgment of impotence, the defender argues that greater reliance should not be placed on this larger number of judgments, because, as Beatus Luca observes in *De iudiciis et disputationibus*, 33, n. 20, "experts are taken as witnesses of facts, not as judges or arbitrators." Moreover, it does not seem true that the majority of experts agreed on the judgment of impotence. "Indeed, Doctor Woicickowski believes that the physical impotence of Stanisław Bojarski, in relation to his wife, is only probable, not certain and absolute." Felix Brecki: "In my opinion, the physical impotence of Stanisław Bojarski is neither entirely certain nor beyond doubt, because it is based on emotional states

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on the part of Stanisław Bojarski related to his wife, and the nature of those emotional states is not known to me, nor is it now." Valerian Wilczewski: "I have determined that the virility of Stanisław Bojarski was at the highest degree, so that he could only complete the conjugal act with the strongest carnal stimulation." And although B. Bieniecki and Rymarckiewicz say that the impotence is "neither doubtful nor uncertain," yet, since they derive this from moral causes of hatred and aversion between the spouses, which causes are denied by the servant Veronica Struglinska, it is necessary that the judgment of the doctors should collapse and vanish. And in the same assessment, for the same reasons, the opinion of the Roman doctor Battistini seems to be included; for he too assumes that the spouses lacked mutual love, which the servant, as a witness, completely denies.

[*Latin ed. p. 275*]

WŁADISŁAW AVIEN. 275. Moreover, the same should be considered regarding the non-judicial physician Zarewicz, who, although he had testified in writing about the absolute and incurable impotence of Stanisław, nevertheless, when questioned in court, responded: "Regarding the incurability, it was difficult to judge this at one time; however, from the account and expression of Mr. Boiarski, I could reason." Furthermore, the physician Ostozichi, among the witnesses, when questioned by the actress, said: "I found him very weakened and impotent for marital acts; which latter, however, I repeat from his own confession." Therefore, after carefully considering the opinions of all the physicians, the defender believes that there is no valid evidence to support the woman's claim regarding the husband's impotence. Moreover, the spouses contradict each other entirely, since Hedwiga states that she is certain that her husband did not complete the marital act, while the husband, in turn, admits that he has frequently had consummated carnal relations. Furthermore, in this contradiction, if the woman had complained against her husband immediately from the beginning of the marriage, or at least within a year, her claim could have been admitted; but since she challenged the marriage after a year, indeed after a year and a half, it must be rejected according to the provision of chapter 1 concerning frigidity and bad faith, "because, as is cautioned there, if she wished to proclaim it, why did she remain silent for so long?" Nor can Stanisław be accused of lying or perjury, since his words regarding the frequency of marital congresses can be explained as referring to attempts; while, in turn, the actress seems too eager in her case, as testified by Veronica Strunglinska, the mediator of the affair, "so that she would not defame the lady and cause damage to her reputation." Regarding the use of medications, the defender notes that this only serves to demonstrate that Stanisław was not in perfect health, but was not, by any means, impotent. The same must be said about the reputation, which, since it is not fully proven in itself, furthermore does not appear when thoroughly investigated in this

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matter. And although Sánchez De matr. I. 7 q. 109 n. 15 teaches that "when a woman was corrupted, before marriage, nec-

[*Latin ed. p. 276*]

276. WŁADISŁAW AVIEN. The fact that a man is cold or not can be ascertained by observing his body. This matter must be referred "to witnesses who, having heard from the spouses themselves, have never been able to consummate the marriage," although, as Sánchez states, "in this case, there are witnesses who support this claim, so that this proof 'merely suggests the truth and the matter is as it appears,' as cited above." If the second, third, fourth, and sixth witnesses, when questioned, stated that they knew nothing about the lack of consummation of this marriage, they all answered negatively. The fifth witness murmured: "I knew that Stanisław was already weakened and debilitated even before the marriage; this was a general opinion." The seventh witness, who is the administrator of the estate of Hedwiga, said: "As far as I could see, the main reason why the spouses, the Boiarskis, did not want to live together was the violent and terrible character of Mr. Boiarski. Later, after being informed by Mrs. Bojarska herself, when she indicated me as a witness in the first divorce proceedings, the reason for the divorce with her husband was his impotence." Indeed, the supposed witness again testifies; I learned that Mrs. Bojarska did not consummate the marriage only in the consistory at Kalisch. The first and eighth witnesses, the doctors Ostrinski and Zarewicz, about whom we have already spoken, remain. There is still the ninth, who is the plaintiff's aunt. This woman admits that she heard complaints from her niece about her husband's impotence, "and it seems to me that this was in the first months of married life, after their return from Paris," but Veronica Strunglinska confesses that she only learned of this later; she says: "When the Bojarski spouses were separated, and Mrs. Bojarska initiated divorce proceedings, I, being amazed (because I had often seen the Bojarski spouses indulge in marital intimacy), asked why all this was happening, since I had so often been a witness to their loving marital customs. To this, Mrs. Bojarska replied: 'Do you think something was wrong? He only tried.'" We must not place too much credence in the testimony of the plaintiff, even though...

[*Latin ed. p. 277*]

Władysław Avien. 277. He calls them "religious and truthful witnesses," and now he names the seventh witness. Indeed, it is not surprising that those induced by the plaintiff are abundant in supporting his claim. Moreover, the witnesses who refute the plaintiff's claims, or who testify in favor of the marriage, are absent, which, furthermore, the defender argues, was done contrary to the instruction of the Sacred Congregation. But can he truly claim that the opinion of Sanchez is that only witnesses of the "seventh degree" should be called by the party alleging impotence? For

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it does not seem that this is the meaning of Sanchez's words. Indeed, as he himself explains in his work *De Matrimonio*, book 7, disputation 109, paragraph 11: "Although in the preceding discussion we said that, if both spouses declare the impediment, the oath of seven relatives of each spouse should be required, and thus fourteen relatives in all; but when only one declares it, only seven relatives of the one who declares it must swear that they believe him to be telling the truth. Because, if the other denies it, the relatives of that one are not to be called to swear in favor of the one who declares it." However, this does not exclude that they may be called to testify regarding their religiousness and other matters. This, indeed, seems to be prescribed by the instruction of the Sacred Congregation, but it is also just, that there be equality between the plaintiff and the defendant. Furthermore, it is wrongly deduced from Sanchez that, in cases of impotence, the judge should be more inclined to grant a dispensation, rather than to uphold the validity of the marriage; for in the same work, book 7, disputation 103, paragraph 8, he says: "When there is doubt whether there is true impotence and whether the marriage has been consummated, and neither, with sufficient diligence, can be resolved: I believe that in this doubt, one should presume in favor of the validity of the marriage, and that it should not be dissolved once it has begun. I am led to this conclusion because, since everyone is naturally presumed to be capable, the one who asserts true impotence, when that impotence is doubtful, bears the burden of proving it; and until it has been certainly proven, the presumption is in favor of natural capability, and consequently in favor of the validity of the marriage." And therefore, the defender, according to Sanchez, only wants a dispensation to be granted in the case when the impotence is certainly proven, but there is doubt about the consummation of the marriage.

[*Latin ed. p. 278*]

278. Władysław IV. It is uncertain whether the condition [of impotence] preceded the marriage, or whether it could not have existed prior to the marriage; certainly not, when, as in this case, the actual impotence itself is uncertain. Given these circumstances, and since the lack of consummation of the marriage cannot be demonstrated from the head [i.e., the source] of impotence, it is superfluous for the defender of the cause to speak of the reasons for a dispensation, and he insists that the sacrament must be maintained. Having considered these points, the following questions were proposed: I. Does the marriage in this case constitute a nullity? And, to the extent that the answer is negative, II. Should the Most Holy [See] consider a dispensation regarding the marriage that is valid but not consummated in this case?

RESOLUTION. The Sacred Congregation, having knowledge of the matter on June 15, 1889, decided to respond: To I, a negative answer will be given; to II, an affirmative answer.

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FROM WHICH WE GATHER:

I. The impediment [of impotence] distinguishes the particular contract of marriage, just as every marriage distinguishes an absolute and total impediment.

II. The impediment of impotence appeared to be at least relative, and the celebration of the marriage preceding it should not be considered to invalidate this marriage.

III. It seems more tolerable and honest to dissolve the marriage than to provide, under the name and law of marriage, an opportunity for incontinence and to foster a continuous sin; indeed, a prejudice and injury are inferred to the same sacrament.

IV. To demonstrate a consenting reputation is a strong presumption, especially when it concerns an impediment that is proclaimed by many to be manifest.

V. Only seven witnesses are required from the affirming side when one affirms, while the other spouse denies the impotence.

[*Latin ed. p. 279*]

279 DISTRIBUTION AT MONREALE. June 8, 1889. Session 22, chapter 3, Concerning Reforms. In the cathedral church of Monreale, there has long existed the custom that the canon archpriest, to whom the care of souls pertains, be present in the choir, in order that he may be able to receive the daily distributions; however, this occurs only in two cases, namely, when he hears the confessions of the faithful in the said cathedral, and on Sundays and feast days, for those canonical hours which immediately follow the preaching or parochial instruction. Now, taking advantage of the opportunity presented by the new compilation of chapter statutes, the archpriest Restagno requested that this Holy Congregation insert the following article therein: "The canon archpriest who has the care of souls, while absent from the choir for the sake of his ministry, shall be considered present and participating, and shall receive the distributions, with the exception of those which are said among the present, but with the conscience of the archpriest burdened, according to the norms of law, so that he may not abuse this privilege." The chapter strongly opposed the requests of this archpriest; hence, a rescript was issued ordering that the matter be discussed in a plenary Congregation. SUMMARY OF THE FACTS. A Synoptic Discussion. In favor of the archpriest, it was primarily considered that a clear and formal disposition of the Council of Trent, Session 23, chapter 3, Concerning Reforms, exists, which reads as follows: "But if any of the aforementioned dignities... have the care of souls... then, for the time that he resides in and ministers in the assigned church, he shall be considered as present and participating in the divine services, in cathedral and collegiate churches." The decree of the Council of Trent is supported by constant

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and uniform decisions of the Holy Congregation of Rites. Thus, in Ascoli, November 20, 1830. WHAT FAVORS THE ARCHPRIEST.

[*Latin ed. p. 280*]

280 From Monreale, a question was posed: Whether and what distributions and benefits canons who are absent from choral service can receive, for the exercise of the care of souls: The Sacred Congregation of Councils responded: "Affirmatively, regarding all distributions and benefits, except those which, by their nature, are due only to those who are actually present, as is the case in Milan. February 3, 1609; Monreale, June 8, 1726, and December 6, 1732; Risana, July 27, 1839; Papien, January 18, 1882; Sabina, July 24, 1886, and elsewhere." Nor is the doctrine of canonists different, as can be seen in Ferraris, who in Volume V, Distributiones, number 29, writes: "A canon who is absent from the choir receives the daily distributions, by reason of the service of the care of his canonry, as if he were present, according to the Council of Trent, Session 22, chapter 3." This is in agreement with Benedict XIV, Instructiones, number 107, number 56; Scarfantonio, book 2, title 10, number 9 and following; Lucidi, Volume I, page 309. Furthermore, the archpriest states that, more and more frequently, circumstances arise that make it difficult to provide sufficient assistance, and in the first place, the increase in the number of parishioners, especially after the establishment of the SomÃ¢a garrison of the Alpine troops and the military district; this results in the fact that, more often than in the past, the need arises to attend to the sick. Furthermore, the number of clergy has decreased, so that the archpriest cannot easily find coadjutors; in addition, there has been a decrease in the revenues of the archpriest's benefice due to higher taxes, which places the archpriest in a situation where he cannot support more than one assistant priest. Indeed, from the perspective of revenues, it can be deduced from the accounts of the archpriest Eula, who later became the Bishop of Novara, for the year 1876, that the active revenues of the benefice amounted to 4966 livres; the passive revenues amounted to 4136 livres, so that only 840 livres remained for the archpriest. After these statements, proceeding to refute the objections of his opponents, he first points out that it is entirely false that the archpriest's office was formerly attached only to the habitual care exercised through a Vicar; and he argues that his predecessors...

[*Latin ed. p. 281*]

At Monreale, the 28th of the month, it has always been, and certainly is now, the case that there is actual care [exercised]. And to confirm this, he cites the chapter statutes completed in the year 1480, which are still in force; the collation of the archpriestship, which takes place through a process of competition, as prescribed by the Council of Trent, Session 24, Chapter 18, concerning the reform, for those holding benefices with the care of

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souls; the collation bulls themselves, which attribute the care of souls to the archpriest, and which contain not a single word about a vicar through whom this care should be exercised (whatever may be the case with those documents cited by the opponents, in which perhaps an error may have crept in); and finally, the fact that the actual care, which the archpriest now enjoys, is clearly demonstrated, and that no change in this has occurred. Regarding the second objection, namely that the archpriest was admitted to receiving distributions only later, through the Bishop of Romagnano and with the condition of absolute absence, the advocate observes that the canons retained, and that the archpriest of that time, by virtue of the same decree, renounced in his own favor the chapter's decimes, offerings, and funerals, and undertook the burden of supporting a chaplain, who not only assisted the archpriest in the care of souls, but also rendered various services to the chapter. From these facts, he argues, it is clear that the archpriest obtained for himself a share of the distributions, and that if these were denied to him when he was absent from the choir due to the care of souls, he alone would bear the burdens, while others would benefit. Furthermore, the words that prescribe attendance in the choir at that convention do not exclude the archpriest from the distributions if he is absent from the choir for reasons of service, but should be interpreted according to the canons, so that he must participate in the choir, and it is not permissible for him to be absent except for a proven and legitimate reason. If this is not conceded, ridiculous consequences would follow, namely that he could not even be absent from the choir in a case of infirmity, without being penalized. For general terms either exclude all legitimate reasons for absence, or they admit them all equally. As for custom, he notes that this was not prescribed, because, according to the canons, it was contrary to the archpriest.

[*Latin ed. p. 282*]

282. The clergy of *Montis Regalis* have repeatedly protested, as had the archpriest Baglioni as far back as the year 1519. It is equally necessary to refute the assertion that distributions are purely a matter of canon law, and do not pertain to the formation of parochial revenues; this is demonstrated by: 1. The granting bulls, which count distributions as part of the parochial income; 2. The fact that the archpriest obtains his distribution by ceding to the chapter the tithes, offerings, and funeral fees; 3. The fact that the chapter itself ensured that the archpriest's share of the distributions was exempt from a tax of 30%, considering it as part of the parochial income; 4. Finally, by the response of the Sacred Congregation of Rites, which, on April 20, 1697, when asked: "Should daily distributions, given for the sake of service and to the choir, be considered as part of the legitimate canonical income?" replied: "Affirmatively." If the archpriests do not customarily pay the average annual sum to the sacristan, this is because the chapter has re-

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mitted it to them, considering the parochial burdens which they must bear. Similarly, if they are exempt from the 30% tax, this stems from the nature of the parochial benefice; however, this does not exclude the simultaneous quality of being canonical. And the chapter itself, which is the habitual pastor of the two churches of *Montis Regalis*, enjoys the same immunity with regard to certain revenues, although these are undoubtedly considered canonical. Furthermore, it is not true that the burden of appointing an assistant was imposed on the archpriest so that they would be obligated to assist the choir under penalty of losing their distributions; but rather, so that better provision could be made for the service of souls, and so that certain services could be rendered to the chapter by the chaplain. Finally, it does not seem equitable to require the archpriest, to whom far more difficult canonical burdens are imposed, to spend time during the week on the care of souls; for this would be the same as denying him every moment of freedom or rest. And this amount of time may not always be sufficient in practice, given that the parish, even without a military presence, serves 4000 souls.

[*Latin ed. p. 283*]

MONREALE 283. Having presented all these arguments, the archpriest concludes that the aforementioned article ought to be included in the new chapter statutes. THE CHAPTER RESPONDS. In turn, the chapter, citing the words of the Council of Trent: "But those who have been present at the appointed hours shall receive [distributions], the others... shall be deprived of them," and expanding and interpreting these words, argues that the archpriest, citing numerous papal bulls, had previously not had attached to his office anything other than the habitual care to be exercised through a Vicar, nor had any change in this status been recorded anywhere. Furthermore, the archpriest, who was originally excluded from the choral distributions of the chapter mass, was later admitted to participate in them by a sentence issued by Bishop Romagnano on July 26, 1505, through a transaction and with this condition: "provided, however, that the aforementioned archpriest and his successors reside in the aforementioned cathedral church, and participate in Mass and the divine offices." Therefore, the archpriest invokes in vain the general disposition of the Council of Trent, because, since he did not originally belong to the distributions, he cannot enjoy them except by the force of a particular agreement, and only if the conditions are fulfilled by which he was admitted to them. Therefore, the resolutions of the Sacred Congregation cannot be applied to a particular case. Furthermore, the resolution in the case of Monreale, dated June 8, 1726, which was mentioned above, does not apply to that cathedral church. Moreover, besides the agreement against the archpriest, there is also the custom and practice, not of one, but of four and more centuries, from the year 1505 to the present. Indeed, it was formerly even a stricter law; for then

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the archpriest was exempt from the *punctures* only when he assisted at the sacramental confessions in the cathedral, and rest was not granted to him after the sacred homily. Furthermore, it should be noted that there are two kinds of revenues that the archpriest receives, namely...

[*Latin ed. p. 284*]

At Monreale, oblationes destinatae ad servitium chori, debent esse adhibitae ad curam animarum. Hoc est demonstratum esse, per facta ipsorum archipresbyterorum, quod hoc est plus concernens curam parochialis quam canonicam; nam illi numquam voluerunt solvendi mediam annatam pro sacristia, quod onus imponitur omnibus canonicis per statuta; nec, praeterea, sunt subducti tributo de 30 pro centum. Aliter, satis est provisum ad exercitium curae animarum durante tempore servitii choralis, per dispositionem praedictae conventionis anni 1505, quae statuit, ut "archipresbyter canonicus" et sui praedicti successores in dicto archipresbyteratu teneantur et debeant laudabiliter deservire favore curae animarum ratione praedicti archipresbyteratus, videlicet... teneantur et debeant suis sumptibus et expensis habere et deputare unum capellanum presbyterum et unum clericum idoneos... ut continuo intersint et interesse debeant in divinis officiis in dicta ecclesia. Tamen, archipresbyteri non sunt impediti ab absentiando a choro, si necessitas animarum hoc postulet; nam bonum animarum potest praebere iustam causam absentiae, sed ius ad recipiendum id quod praesentibus actuque inservientibus unice reservatur, minime valet. Hoc etiam magis, quod canonici Montis Regalis duos menses, etiam interpolatos, absentes esse possunt, sine punctatione. Unde, archipresbyter, si intentionem habet fugiendi privationem distributionis, oportet ut studeat dirigere et impendere hoc tempus, quod feriatum est, ad curam animarum et ad exercitium ministerii parochialis. Quod vero attinet ad peculiares causas, quibus archipresbyter suam petitionem fulcitur, notandum est quod, ex adventu militum, vix augetur servitium parochialis, cum milites infirmi deferuntur ad nosocomium civile, ubi praesens est capellanus, qui infirmis sacramenta administrat. Cleri vero imminutionem non minus canonicis, quam archipresbytero praeiudicium affert; ex eo quod, per legem ad 12 redacti, non raro vix sufficientes sunt ad choralia officia. Praeterea, praebenda archipresbyteralem, licet tributis...

[*Latin ed. p. 285*]

MONTIS REGALIS 285; [the situation] is made more burdensome and complex by the benefits involved. Therefore, the proposal drawn up by the archpriest of Eula should be disregarded, whether because it was completed during a year of scarcity, or because it was fabricated in order to occupy the attention of the government regarding the parish revenues; moreover, it is asserted that, from that time onward, these revenues have in-

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creased by approximately 1000 *librae*. Finally, in the lost hypothesis, that the prayers of the archpriest might be accepted, the chapter demands that the parochial duties be definitively determined, which would legitimize an absence from the choir, in order to effect distributions, lest a path be opened to abuses and further problems. With all of the above noted, the following proposal was made. The question: Should an article proposed by the archpriest be included in the new chapter statutes, or rather, should one adhere to custom in this case?

RESOLUTION: The Congregation of the Council, having carefully considered all matters, decided to answer the question with the following response: Affirmative to the first part, negative to the second.

EXTRACTS:

I. From the Council of Trent, Session 22, Chapter 3, concerning reforms: Dignities or canons, to whom the care of souls pertains, are to be considered present, for the time during which they have resided and ministered in the assigned church, so that they may participate in divine services in cathedral and collegiate churches.

II. Hence, daily distributions corresponding to the time of absence are to be granted, as if they were present.

III. Except for those distributions and emoluments which are due from the will of testators, which are only for those actually present.

IV. Daily distributions, which are given in consideration of service and participation in the choir, should be properly attributed to the canon of the parish.

V. Custom, in order to obtain the force of law, must be peaceful and legitimately prescribed.

[*Latin ed. p. 286*]

286 MONREALE VI. A convention, in order to be interpreted according to the norms of common law, whenever its words are so ambiguous that they require interpretation. AGRIGENTO MARRIAGE. On July 6, 1889. Session 24, Chapter on Marriage Referrals. Anthony Valenza and Mary of Mark, before their respective parish priests, entered into marriage with the words "in the present," on March 31, 1870. After a decade of unhappy cohabitation with Anthony, having abandoned the marital home, Mary returned to her mother, petitioned, and obtained a separation from the civil court, and subsequently presented a petition to the Most Holy Congregation, in which, accusing her husband of impotence and an unjust intention of avoiding the procreation of children, she requested a dispensation regarding the marriage that had been celebrated but not consummated. Through the Sacred Congregation of the Council, as is customary, the process concerning the non-consummation of the marriage and the reasons for the dispensation was assigned to the Bishop, with the faculty of delegating

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someone for the examination of the parties and witnesses, should anyone reside far from the court. Anthony initially stated that he was prepared to undergo any examination, but later, changing his mind, he refused to appear before the examiner, and was therefore declared contumacious by the judge. The woman testified: that she had lived for nearly a decade amidst quarrels and annoyances with her husband, although from the very beginning she knew that he was neither able nor willing to consummate the marriage, having expressly declared to her on the day of the wedding that he was unable to achieve carnal union, and that he had married her only to have her as a companion, as indeed happened: she had not initially wanted to introduce a cause for the nullity of the marriage, being prohibited by shame and religious fear. *COMPENDIUM OF THE FACTS.*

[*Latin ed. p. 287*]

AGRIGENTO, 287. It was deemed by God's will; but the woman asserted that the man, through his cruel and harsh behavior towards her, had provoked her to seek a judgment of separation. Furthermore, the testimony of a seventh woman was presented, whose principal witness was the elder sister of the actress, named Castrensa, who testified that, as far as she knew, Anthony Valenza had always led an irreligious life, and that her sister, Mary, had recounted the husband's cruelties to her, and had added that they had consummated their marriage carnally on several occasions, but that the generation of offspring had been avoided by Anthony, who shamefully spilled his seed outside of her. To this, Castrensa added that the principal cause of the discord lay in the fact that Anthony was overly familiar with another woman; and that her sister had initiated the proceedings for the nullity of the marriage because the other woman intended to marry him. After this, the woman's physical examination was undertaken, for which three midwives were chosen by the tribunal, who, having been instructed by the physicians, joined in their task after a preliminary bath. After the examination was completed, all unanimously confirmed the laceration of the hymen, but they differed in their opinions regarding the judgment to be rendered concerning virginity and other related matters. Consequently, the physicians declared that they could not render their judgment, because the midwives' responses were contradictory, and because they had not followed the instructions given to them. Then the judge considered it necessary to repeat the examination with more experienced midwives or with physicians; but the actress completely opposed this, and refused to submit to a new examination. In this situation, the question was presented to the Consultors of the Holy Congregation; and the theologian held that the consummation of the marriage was doubtful, and therefore the investigation into the causes for a dispensation was superfluous; the canonist held that the consummation of the marriage was established, and therefore it was by no means necessary to consult with the Most Holy [Father], in order that

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he might grant a dispensation concerning this marriage; and the diligent defender of the marriage accepted these opinions and acted accordingly.

[*Latin ed. p. 288*]

288 AGRIGENTO. Given the circumstances, the following questions were to be clarified: I. Whether there exists a nullity in the marriage. And, to the extent that it is negative. II. Whether a dispensation from a valid, but unconsummated, marriage should be sought from the Most Holy Congregation. RESOLUTION. The Sacred Congregation of the Council, having considered the matter, on July 6, 1889, decided that: Regarding question I, in relation to question II, the answer is negative. THEANEN. DISTRIBUTION. On July 6, 1889, Session 24, Chapter 13, Regarding the reference. SUMMARY OF THE CASE. By letters dated November 26, 1887, sent to the Sacred Congregation of the Council, the Bishop of Teano explained a controversy that had arisen between the cathedral chapter and the penitentiary canon regarding extraordinary distributions. Indeed, on August 14th, the aforementioned chapter had celebrated a votive Mass, and the penitentiary canon was excluded from participating in the proceeds of this Mass, because, being occupied during the sacred time with hearing confessions in the very cathedral church, he did not attend the celebration. The Penitentiary Canon protested, but in vain, for all the members of the chapter replied that, by immemorial custom, extraordinary distributions, both certain and uncertain, had always been divided among the canons present in the choir. Consequently, from this particular case, a general question arose: the chapter maintained that all extraordinary distributions should be denied to the Penitentiary Canon who was absent from the choir and occupied with hearing confessions; while the Penitentiary Canon claimed that they were due to him.

[*Latin ed. p. 289*]

THEANEN. 289 The Bishop, referring the allegations of both parties to the Sacred Congregation, notes that, in his opinion, the canons did not judge correctly when they refused to grant the Penitentiary a share of the distributions. Disputatio Synoptica. The canons adduce the following arguments to defend their rights: by an ancient and unmemorable custom, extraordinary distributions, both certain and uncertain, are granted only to the canons present in the choir, including the Penitentiary; who, recently invited by the Sacristan to attend a votive Mass in the choir, refused; indeed, he requested that a share be granted to him of the extraordinary distributions, and even of the uncertain ones, since he was then occupied with hearing the confessions of some penitents, which could easily be postponed after Mass. It is certain, according to common law, that the Penitentiary, hearing confessions, is due all kinds of distributions; Council of Trent, Session 24, chapter 8, concerning reforms. However, in this matter, both par-

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ticular statutes and a contrary, unusual custom, and the will of the donors, cannot be disregarded. Although we cannot invoke statutes, because they do not exist, the custom prevents the Penitentiary from receiving [a share], even if a large number of penitents were to overwhelm him. The will of the donors could be presumed to be contrary; for they might object that they would see the Penitentiary absent when extraordinary functions are performed, to which the chapter is present for the sake of greater decorum and solemnity, and they would know that he would thus lose his rightful share, as would others who were absent. THE RIGHTS OF THE CANONS. The choir would also suffer damage if the Penitentiary were absent, since the number of canons is so small by civil law; and often some are absent due to illness, or because they have advanced in age. Although it may be desired that the Penitentiary, hearing confessions, should enjoy certain extraordinary distributions, there is no doubt that he should be excluded from uncertain extraordinary distributions. Lucidi, Vol. III, Acts, Tom. XXII, page 257.

[*Latin ed. p. 290*]

THEANEN, cap. 25, page 208 and page 217, no. 30, contain the following questions:

"1. In the case of a canon who is not actively serving, is a portion of the emoluments derived from the association of the dead and from individual funerals due to him? R. No, in all cases.

2. Is a portion of the emoluments derived from fixed anniversaries due in this case? R. Yes, provided that it does not contradict the will of the testators.

3. Is a portion of the emoluments derived from uncertain and extraordinary anniversaries due in this case? R. No.

4. Is a portion of the emoluments derived from additional sung Masses celebrated by the chapter during festivals, at the request of benefactors, due in this case? R. No."

This is not sufficient, for furthermore, the canons, considering these distributions as extraordinary, believe that they should also be taken from the *Poenitentiario* (a fund for the poor), and they seem to intend to take them in the future. Indeed, they proceed as follows: the present question has given rise to another, of greater importance; that is, the distribution should be divided among the present members: and those who are negligent, even if they have a legitimate excuse, should be excluded from it; this contrary custom must be completely eliminated.

The Sacred Congregation of Religious was consulted on January 8, 1863, regarding whether and how the custom of dividing the funds among diligent and negligent canons in this case should be maintained. The Sacred Congregation replied: "No, in all cases, and the Archbishop should ensure

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that the division of funds in the future is carried out in accordance with the laws and resolutions of the Sacred Congregation."

All the canons, except for the *Poenitentiario*, have signed this book. However, one of them, who is the dean of the chapter, took care to note, with respect to the custom mentioned in the book, that he only knows that the canons of the *Poenitentiario* have, in past times, always participated in additional functions by relinquishing the tribunal of Confessions. Furthermore, the canon theologian added that, since he is in the same circumstances as the canon of the *Poenitentiario*, he agrees with the opinion.

[*Latin ed. p. 291*]

CHAPTER 291, and even now he submits to it. These are the things that the chapter proposes for its own benefit, and it seems that nothing should be added to them. LAWS OF PENTENCE. On the contrary, the following points may be opposed to the canonical regulations concerning penance. Boniface VIII, in chapter 1, concerning non-resident clergy, section 6, which law was renewed by the Council of Trent, session 24, canon 12, after stating that daily distributions are to be given only to those present, continues as follows: "But whoever receives anything from these distributions in any other way, except those for whom infirmity or a just and reasonable bodily necessity, or evident benefit to the Church, may be an excuse, shall not acquire ownership of such things, nor shall he make them his own; rather, he shall be held to restore all that he has received contrary to this our constitution. The same rule is to be observed concerning distributions given for the anniversaries of the dead." Furthermore, regarding these last words, Barbosa rightly observes in this chapter, number 23: "The text clearly shows that everything said above concerning daily distributions is also to be understood concerning distributions given for the anniversaries of the dead, and therefore, just as in the three cases here excepted, those who are absent may lawfully receive the daily distributions, so also in the same cases they may lawfully receive those for the anniversaries." However, under the pretext of the benefit of the Church, the canonical regulations concerning penance, while actually hearing confessions, teach, among other things, Bevota, *Institutiones iuris eccl.*, Book II, title XVIII, § 10; hence, he also has the right to enjoy the distributions granted for the anniversaries of the dead in such a case. This is further confirmed by the Council of Trent, session 24, decree on reform, where it is clearly stated: "He who, as a confessor, hears confessions in the church, shall, in the meantime, be considered present in the choir." Therefore, the Council of Trent absolutely decrees that the confessor is to be considered present in the choir while he is actually hearing confessions in the cathedral church, and makes no distinction whatsoever between daily and extraordinary, or fixed and uncertain, distributions. Indeed, it is a well-known axiom of law that,

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where the law does not distinguish..."

[*Latin ed. p. 292*]

292. THE QUESTION. We must not distinguish between these cases; therefore, it seems fitting, in accordance with the decrees of Trent, that the canon who is occupied with hearing confessions in the cathedral should receive all distributions, whether ordinary or extraordinary, which are given to the other canons present in the choir; for, according to the rule of law, the pretended presence of the canon hearing confessions should have the same effect as true presence, just as the effect of the consecration is the same in a case of pretended consecration as in a true one. This is clearly affirmed by what is related in Fagnanus, chapter "Licet," number last: "When the Council decrees that the canon hearing confessions in the church should be considered present in the choir, and a doubt arises as to whether he should also be considered present outside the choir, for example, when he accompanies the body of a deceased person for burial, so that he may also receive the distributions as if he were present in the choir: it was decided to refer the matter to the Most Holy [See of Rome], because the Council speaks only of the choir; nevertheless, the same principle applies in both cases. The Most Holy [See of Rome] declared that the Council intended, in this case, that the canon hearing confessions should participate, and indeed more so, that is, in the choir, and even more so outside of it." Furthermore, the teaching of the authorities is in agreement, who not only teach in general that the canon, while hearing confessions in the church, should participate in the distributions as if he were present in the choir (Schmalzgrueber, L. 3, title, number 95; Reiffenst., L. 3, vol. 2, number 20), but also explicitly state that he has the same right to the distributions that are given to those present. To this, Scarfantonius adds, "Ad lucub. Ceccoperi," I, II, vol. 10, number 1 and following: "The canon who is required to give a theological lecture in the cathedral or collegiate church is excused from attending the choir with its joys, including the distributions and other emoluments, for the entire day; the canon hearing confessions... is bound to be available at appropriate times in his confessional and to hear the confessions of all... At that time, he is counted as if he were present in the choir, in processions, and at the funerals of the dead." Also, the Most Reverend Cardinal d'Annibale states, "Summula Theol. Moral," vol. III, page 365, number 492:

[*Latin ed. p. 293*]

THEANEN. 293 "The duty of the Canon Regular is, he says, to hear the confessions of the diocesans, as if in the place of the Bishop. But he is not bound by a stricter residence than the others. However, while he hears confessions in the Church, he also receives distributions, even those that are accidental." Thus, also, others. But all doubt vanishes when the constant practice of the Holy See is considered. Thus, in January, 4th of

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September, 1591, it was decided that the Canon Regular, while actually hearing confessions in the Church, is not only considered present in the choir to receive distributions, but also the very alms that are distributed for the association and burial of the bodies of the deceased, or for supplications and processions that are held through the city. Cf. Barbosa, *De off. et pot. Episc.*, p. 3, alleg. 55, n. 30-31; *Apost. Decis*, collect. 126, n. 4-5; Ferraris, *voce Canonicatus*, art. 9, n. 79. It has been explicitly resolved that the Canon Regular, in general, has the right to extraordinary distributions, while he hears confessions in the Church, in Verulana, *Emolumentorum*, 15th of December, 1877, in which Viterbo is also cited, 15th of March, 1631, ad dub. 2. Finally, the Canon Regular is almost always equated with the theologian, and both have equal rights. The Holy See, in Vicenza, *Optionis*, 31st of January, 1852, § Primo; Belluno, *Erect. Praeb. Poenit.*, 23rd of April, 1864, § *Ius enim*. Indeed, the Canon theologian, for the entire day that he reads, receives not only ordinary distributions, but also whatever benefits are to be distributed among those interested. Cf. Card. Petra, *Comment, ad Constit. Apost.*, vol. 4, n. 55; Ferraris, *l.c.*, n. 42. And it is the constant practice of the Holy See. Cf. Avignon, October, 1586, ad dub. 17 (lib. 4 decret, p. 189); Oriole, 12th of August, 1628; Barcelona, *Praeb. theol.*, 2nd of June, 1860, *per summaria precum*; Verulana, *Emolum.*, 17th of December, 1877; and the case treated by *Sum. precum* on the 20th of September, 1879, where the Holy See was asked whether the theologian receives, besides the fruits of the prebend and the daily distributions, also all the benefits that would come to him if he had...

[*Latin ed. p. 294*]

294 THEANENSES. When a Canon, vested in his canonicals, is present in the Choir, and the question is asked: "Does a Canon, absent for a legitimate reason, lose his rightful share of the offerings?", he replied: "Affirmative, unless the will of the donor or testator dictates otherwise" (1). Therefore, according to common law, a Canon, acting as a confessor and actually hearing confessions in the Church, should be considered present in the Choir for the purpose of receiving both ordinary and extraordinary offerings, even those that are uncertain. However, this is not the case: indeed, the Sacred Congregation of Rites, in Alexandria on September 29th (Lib. 21 Decret., p. 90), considering the following question, whether and when Canons, legitimately absent, lose their proper daily offerings, and whether they should also receive and participate in proportion to the offerings of other Canons who are absent without a legitimate reason: responded: "They should also receive the offerings of the absent." This was also decided in Milan, in the distributions of February 4th and December 7th, 1715; in Aprutina, in the distribution of June 4th, 1755; and in Spoleto, in the execution of the decree and participation of the offerings of others, on January 25th, 1851. See also Benedict XIV, Instit. eccles., 107, n. 46. As

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we saw above, from Boni, f. VIII, in chapter 1, concerning non-resident clerics, in paragraphs 6 and 7, and from the Council of Trent, session 24, canon 8, a confessor is considered present, even when hearing confessions in the church, if he is legitimately absent. Therefore, according to common law, in the case under discussion, the confessor has the right to the offerings. This conclusion is confirmed by the practice of the Sacred Congregation of Rites regarding a Canon who has the care of souls attached to his canonry: thus, in Rome, in the distributions and provisions of December 20th, 1873, May 9th, and September 12th, 1874, in response to question II: "Is the parish priest, Saint Nicholas, absent from the choir due to the exercise of the care of souls, entitled to the offerings of Canons who are absent in this case?" The Sacred Congregation of Rites responded: "Affirmative." Also, in Adrian, in the distributions and provisions of August 23rd, 1879. Furthermore, with regard to the present question, the confessor can be considered equivalent to a Canon who has the care of souls attached to his canonry. What the Thean Canons allege, regarding the practice of the Sacred Congregation of Rites of eliminating, as an abuse, that custom (1) Volume XIII, page 97, was a question that has been decided.

[*Latin ed. p. 295*]

THEANEN. 295, namely, that those who are absent should participate indiscriminately in the benefits, not only those who are present, but also those who are absent, this proceeds only from the fact that, as is evident from the aforementioned decree of the Congregation of Indulgences, *Servitii Chori* of August 8, 1863, and from many others, when, namely, benefits are granted to those who are absent without a legitimate cause, just as if they were receiving ordinary distributions. However, the Capitulars say that common law can be derogated from either by a particular statute, or by custom, or by the will of the donors. Hence, they contend that the *Poenitentiarium* is excluded from extraordinary distributions by custom and the will of the donors. Indeed, with regard to those who are absent due to infirmity, or due to a granted indulgence, the Sacred Congregation of Indulgences has repeatedly ruled that, through the aforementioned means, common law can be voluntarily derogated from. *Aquipendien. Indulti*, March 18, 1719; *Reutin., jubilat.* August 28, 1870; *Roman., Dubia Indult.* May 6, 1820, § *Indultas*. But with regard to the aforementioned rights of the *Poenitentiarium*, setting aside a particular statute, about which no question is raised in our case, nowhere is it found that the Sacred Congregation of Indulgences has admitted that common law can be derogated from in this matter by a particular custom. And rightly so. For, in the first place, this custom would be contrary to the law introduced by the Council of Trent, indeed, contrary to that law which was enacted for the public good of the faithful. For it is decreed that the *Poenitentiarium* should be occupied in the sacramental ministry, present in the choir,

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and distributing benefits, so that, free from the solicitude of confessions, he may not abandon the tribunal for the spiritual benefit of the faithful who come to the cathedral church, to their detriment and scandal, and to the murmurs of the faithful. Given this situation, if a derogation were granted, it would be considered a corruption of the law, rather than a law introduced for the sake of morals, and this practice, if received, would perhaps seem more to be eradicated than tolerated. Indeed, although the *Poenitentiarius* may, or may not, use his privileges according to his own will and circumstances, he cannot, however, renounce them, and completely absolve himself from them. For since that right was introduced not so much for the benefit of the person, as for the benefit of the office for the public good, it does not belong to him to—

[*Latin ed. p. 296*]

296. THEANEN. The dispensation [from certain obligations] cannot be granted absolutely, according to Reiffenstuel, L. 2, Decret. t. 2, n. 243, because a public renunciation would easily lead to detriment, and furthermore, it would seem to inflict a wound upon the integrity of the benefice. Moreover, customs that are contrary to the laws of canon law have been constantly condemned by the Sacred Congregation of Councils, as appears from Corien, August 20, 1848; Bisarchien. Praeb. Theol., September 20, 1857; Perusina Theol., July 30, 1859. In the last-mentioned, concerning the question of whether a canon theologian is bound to be dispensed from the choir, even if his predecessors had never used this privilege, the response was: "Affirmatively." However, in such matters, a penitentiary theologian is considered entirely equivalent to a canon theologian. Furthermore, as appears from the note appended by the Dean of the Chapter and another canon, this [argument] can be alleged solely to demonstrate the aforementioned custom, namely, that past penitentiary theologians were always present in the choir when extraordinary functions were performed. Indeed, in order for the existence of this custom to be established, it would be necessary to further prove that the penitentiary theologians acted in this manner at the command of the chapter, and while assisting the penitents in their confession. However, both of these things are lacking; hence, even from this point, the custom alleged to the contrary seems to be of little weight. Finally, concerning the will of the donors or testators, in fact, the Sacred Congregation of Councils, in a case examined through Summaria precum on September 20, 1879, responded that a canon theologian does not profit from extraordinary distributions when the will of the donor or testator is opposed. However, certainly not any will is sufficient for this; but it is necessary that the will of the testator or donor be expressly stated, as the Sacred Congregation of Councils stated in Roman, Dubia, May 6, 1820, § Indultus, or, in other words, that it be explicitly stipulated by the testator or donor that only those interested [in the benefice] may participate. Cf. S.

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C. C. in Novarien. Iubil., January 19, 1680, Lib. 32, Decret., p. 44; Adrien, Distrib. et Provent., August 23, 1879. With both of these things considered, the proposed [action] should be abandoned.

[*Latin ed. p. 297*]

QUESTION. Can a canon penitentiary, being absent from the choir, in order to hear the confessions of the faithful as part of his office, besides the ordinary distributions, also receive, in such a case, alms and other benefits, whether extraordinary or fixed, or fortuitous?

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on July 6, 1889, judged it proper to respond: Affirmative, and furthermore.

FROM WHICH THE FOLLOWING ARE GATHERED.

I. It is certain that distributions are given only to those present in the choir; however, those who are excused from being present due to infirmity, or by a reasonable bodily necessity, or by evident benefit to the Church, are considered as present by a legal fiction.

II. The canon penitentiary, excused from being present in the choir for the benefit of the Church, and in whose case a legal fiction of his presence is applied, operates in the same way as if he were truly present.

III. Therefore, no distribution is withheld from him, and he is owed, besides the ordinary distributions, also extraordinary ones, and alms which are distributed for the association of the dead, and for processions which are held through the city, unless there is a clear and expressed will of the giver or testator to the contrary.

IV. The canon penitentiary deserves to be considered equal to a canon theologian, explaining the sacred scriptures, and to a parish priest exercising the care of souls; but to both, those who perform the duties of their own office, all distributions are given.

V. The canon penitentiary is to make every effort at appropriate times to be present in the confessional, and to hear the confessions of all, as if in the place of the Bishop; since, however, he is not bound by law to a stricter residence than other canons; therefore, while he is hearing confessions, he is rightly considered to be present in the choir, and he has the right to all ordinary and extraordinary distributions, certain or uncertain.

VI. This jurisprudence in the matter is not to be suspended either by the will of those who have given nothing, or by an added contrary custom, which has not been sufficiently proven.

[*Latin ed. p. 298*]

298 FROM THE HOLY CONGREGATION OF BISHOPS AND REGULARS, DECREE OF EXEMPTION FROM PAROCHIAL JURISDICTION,

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dated April 12, 1889, Session 24, Chapter 18, Concerning Reform. Reverend Father Thomas Pendola, a cleric of the Pious Schools, born in the year 1828, founded, within the limits of the parish of the blessed martyrs Quiricus and Julitta in the city of Siena, an institution for the deaf and mute, for both men and women; employing the labor of his Religious brethren for the men, and entrusting the care of the women to the daughters of Saint Vincent de Paul. However, in the year 1876, the Religious of the Pious Schools, having been expelled from the noble college of the Tolomei, took refuge in the aforementioned institution for the deaf and mute, and there formed a religious community. Nevertheless, from the day that such an institution was established until the most recent times, whenever any of the deaf and mute, whether men or women, became ill, the parish priest was called to provide assistance; who, after administering the Holy Viaticum and Holy Oil, brought the deceased's body to the parochial church. Finally, in these recent times, when one of the religious women, who was deaf and mute, fell ill, the current director of the institution provided spiritual assistance to the sick woman, administering the Holy Viaticum and Extreme Unction; and after the sick woman had been anointed, the parish priest was called only for the funeral rites. Considering himself burdened by the actions of the director of this kind, the parish priest appealed to the Curia of Siena, asserting that the director of the institution was encroaching upon parochial rights concerning the Religious and the education of the students.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 299*]

SECTION 299. It is necessary to consider this matter; but as for what pertains to the rights of lay students and servants, these belong to them. Conversely, the Director of the Institute, relying on papal Bulls, sacred Canons, the judgment of learned doctors, and the example of other Institutes, sought to assert his parochial jurisdiction over all those who reside within the Institute. The Director presented his case to the Reverend Procurator General of the Order, who further argued that all colleges of the Order, whether in Italia or elsewhere, established as models after the College of Nazareth in the city, enjoy such rights and privileges; that is to say, that religious priests residing in the colleges may hear the confessions of students and servants, as approved by the Procurator General; and that furthermore, these same students and servants, as members of the community, may fulfill the precept of Easter and receive the Sacrament of Extreme Unction without the permission of the parish priest or ordinary. He also contended that other religious orders enjoy similar rights and privileges; and consequently, that all regulars should enjoy them; and that this is the doctrine transmitted by Gury, by Scavini, and by Saint Alphonsus. Such documents, for the purpose of information and deliberation, were

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sent to the Archdiocesan Curia in Senen, which, in a carefully worded letter, among other things, which will be mentioned later, stated that the aforementioned Institute is located in regium, that its director is chosen by the government, and that the teachers are chosen by a commission of men, some of whom are appointed by the government and some by the municipality. A Synopsis of the Dispute: The parish priest, in defending his parochial rights concerning the Institute, observes that it is a matter of fact that the directors, from the founding of the Institute, have consistently recognized these rights in the parish priest for the time being. This is especially evident from the actions of Father Pendola, who in the year 1860, at that time the parish priest, indicated that he had obtained from the Apostolic See the faculty to administer the sacraments in the church of the Institute. THINGS THAT APPEAR TO FAVOR THE PARISH PRIEST.

[*Latin ed. p. 300*]

300. The Parish Priest observes that the Communion of the Institute is given to its students, both male and female. This, he states, demonstrates that the director of the Institute cannot exercise parochial rights over the students, but that these rights are reserved to the parish. He confirms this assertion with a letter from the spiritual administrator of the Church of St. Augustine, who, at the request of the Parish Priest, Fathers Quirici and Iulitta, sought permission to transfer the body of the doctor Perrazzi, who had died in the Institute, to the parish of St. Augustine, to which it belonged, and also from Father Pendola, who expressed his gratitude for the permission granted by the aforementioned Parish Priest. But setting aside all these matters, the Parish Priest maintains that the students of the Institute are subject to his jurisdiction, because they are not considered to be of a house and family. To confirm this, he cites two resolutions of the Holy Congregation of Bishops and Regular Canons: one of June 21, 1848, ordering that a decree be reformed, by which the Bishop of Parma had prescribed that the Regular Canons of St. Paul have the right to administer the Sacraments of Penance, the Eucharist, and Extreme Unction to their students, even without the permission of the Parish Priest of St. Sepulchre, within whose territory the aforementioned Regular Canons' monastery was located. The other, of July 21 of the same year, which stipulates that the rights of the Parish Priest must be preserved in the event of death. Furthermore, he argues that it is possible to infer that the director of the Institute should be subject to the jurisdiction, because the disposition of the Council of Trent, which states that those who serve families and live within the walls of a monastery are under the jurisdiction of the Regular Canons, can be applied *a fortiori* to the students who reside in the same Institute. However, the Parish Priest observes that this cited disposition must not be held in high regard, because the Council of Trent could not have spoken of students living within the walls of monasteries, since such colleges did not exist

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at that time. Finally, the Parish Priest notes that the Most Holy Pope Pius IX, on September 3, 1864, granted an exemption to the Congregation of St. Sulpice and to the Sodality of the Holy Spirit in France. From this, he infers that—

[*Latin ed. p. 301*]

SECTION 30. It is the case that parish priests have jurisdiction over those residing in religious houses.

THE DIRECTOR OF THE INSTITUTE STATES. The Director of the Institute readily admits that his Institute has been, from its founding until the year 1876, permanently subject to the jurisdiction of the parish; but he adds that this is of no consequence. From the moment that the religious, having been expelled from the noble College of the Tolomei, took refuge in the Institute, it has been admitted to participation in the rights and privileges with which the religious family enjoys, by concession of the Supreme Pontiffs. Indeed, since it is beyond doubt that religious families enjoy exemption from the jurisdiction of the parish priest, it follows that the aforementioned Institute, insofar as it pertains to regular clergy, ought to be exempt from the jurisdiction of the parish priest. And this is the doctrine of theologians of great note, among whom Saint Liguori is cited; Gury, Volume 2, page 464, of the Roman edition, and Scavini, Volume 1, page 327, of the eleventh edition. However, he also believes that exemption should be admitted for another reason; because, in the year 1864, Pope Pius IX promulgated a decree by which he wished that all students residing in colleges and institutes, the administration of which had been entrusted to regular clergy, should be exempt from the jurisdiction of the parish priests. Furthermore, he observes that the parish priest has never interfered in the religious instruction, and indeed could not, given the special nature of the instruction provided to the students. Moreover, he compares the Institute to infirmaries, which, by virtue of a pontifical bull, are dependent on a priest to whom the religious care of the sick is entrusted, excluding the parish priest of the place where such infirmaries are established. He also asserts that the religious in the Institute have their own church, which is public, in which they celebrate the conventual Mass daily; that the archbishops, during pastoral visitations, only visit the Tabernacle in which the Most Holy Sacrament is reserved; and that the servants of the Institute, since they are part of the religious family, receive religious instruction from the priest.

[*Latin ed. p. 302*]

302 SEMEN. He argues that it is more fitting for them to receive [the sacraments] from a designated priest each week; and this, he states, is the case because such servants are exempt from the obligation of attending the parish church. Furthermore, he observes that all students and others living

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in the Institute with the Religious fulfill the Easter precept in the church of the same Institute. If, however, in a college of the same Order located in Florencia, secular servants are under the jurisdiction of the Prior, Father Lawrence, then the Institute itself presents no obstacle, since this occurred due to a particular reservation. With this exception of the college, it is undoubtedly the case that the other institutions in which Religious preside over schools are exempt from the jurisdiction of the parish priest. Therefore, he maintains that, *a fortiori*, the Senen Institute should also be exempt from the jurisdiction of the parish priest, and that this exemption should arise from the miserable condition of the students. He further observes that it has never happened that a parish priest has visited a monastery or college in order to administer the sacraments for the good of souls; rather, he acts in this way whenever the matter concerns places that are under his own jurisdiction. And if, at times, the parish priest, Saint Quiricus, has administered the sacraments to Religious who are dying in the Institute, it is because he was invited by the Rector of the Institute, who requested the parish priest's assistance for the dying out of piety. Having noted these facts and legal considerations, the Rector concludes that the Senen Institute for the deaf and many others should be declared exempt from the jurisdiction of the parish priest, Saint Quiricus. The arguments presented by the Rector in favor of the Institute's exemption are considered by the Episcopal Curia, which deems it fitting to grant the Rector of the Institute the faculty, for the time being, of providing spiritual assistance and administering all the sacraments, including Extreme Unction, to both male and female students residing in the Institute, as well as to other persons who live in the same Institute. And this exemption from the parish priest is not only useful, but also necessary, and is for the good of the students, because they do not understand anything except what is communicated to them by the Religious.

[*Latin ed. p. 303*]

SECTION III. The assistance of a parish priest would prove ineffective and entirely useless if entrusted to a teacher who does not understand such a manner of speaking. Having considered all these matters on both sides, the purpose was to clarify the following question: Whether and in what way the students and lay friends residing in the Institute for the Deaf and Mutes of the city of Senen, directed by Regular Clerics of pious schools, are exempt from the jurisdiction of the parish priest in this case.

RESOLUTION. The Holy Congregation of Bishops and Regulars, after mature examination, decided on April 12, 1889, to respond as follows: Negatively, in all respects; but, considering the special circumstances present in the case, application should be made to the Most Holy Father for a grant of exemption from the jurisdiction of the parish priest, except for the rights of the parish priest regarding funerals.

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FROM WHICH THE FOLLOWING ARE GATHERED:

I. In monasteries and also in colleges, where life is conducted according to established rules, both Regular superiors and confessors of the Regulars of the same monasteries or colleges can hear the confessions of those secular individuals who are of the family and constant companions, but not of those who only serve them.

II. Young men and boarders studying in Regular colleges should be considered as belonging to the family of the monastery or college, so that, without consulting the parish priest, they can receive Holy Communion, the Viaticum, and Extreme Unction from the superior Regular.

III. In this particular case, this status has been denied to the deaf and mute Institute of Senen, firstly because such an institute is maintained not so much by Regular Clerics, but rather by secular authority; and secondly, because the parish priest in the place where the institute is located regularly administers the sacraments to the male and female students who are infirm.

[*Latin ed. p. 304*]

304. SENEN. IV. Therefore, due to special circumstances present in the case, a petition was made to the Most Holy [Father] for a dispensation from the jurisdiction of the parish priest, so that, however, the rights of the parish priest regarding funerals would remain intact. SACRED CONGREGATION OF INDULGENCES, DECREE for the City and the World; by which an Indulgence is granted to the faithful for the pious exercise of fifteen Saturdays in honor of the Mother of God under the title of the Most Holy Rosary. For many years, members of the confraternities of the Most Holy Rosary have been accustomed to offer a singular act of piety to the Blessed Virgin Mary on fifteen Saturdays, without interruption, or immediately before the feast of the same Blessed Virgin Mary under the aforementioned title, or even at any other time within the year. This pious practice, already endowed with sacred Indulgences by the Supreme Pontiffs for the aforementioned members alone, consists in the fact that on each of the aforementioned Saturdays, the members attend the sacraments of Confession and Holy Eucharist, and also perform some act of devotion in honor of the fifteen mysteries which are recited in the Marian prayers of the Most Holy Rosary. Now, since the practice of offering this act of piety to the Blessed Virgin Mary has become very common among the faithful, prayers were presented to the Most Holy Lord Pope Leo XIII, that he would deign to open the heavenly treasures of Indulgences also to the faithful who devoutly perform this pious exercise. Furthermore, His Holiness, to whom it is supremely dear that the cult and piety towards the Blessed Virgin under the title of the Most Holy Rosary be fostered, received the aforementioned prayers in an audience held on September 21, 1889, and, through the

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aforementioned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, graciously accepted them, and, after abolishing any other Indulgence that may have been attached to this pious exercise for all the faithful in any way, grants to all the faithful of both sexes, who, on each of the uninterrupted fifteen Saturdays, or immediately preceding the feast of the Blessed Virgin Mary under the title of the Most Holy Rosary, or even at any other time within the year, are truly contrite,

[*Latin ed. p. 305*]

From the Sacred Congregation for Indulgences, 305: Those who, having confessed and received Holy Communion, have devoutly recited at least a third part of the Most Holy Rosary, or have otherwise piously contemplated the mysteries of the Most Holy Rosary, are granted a Plenary Indulgence, applicable also to the souls of the departed, once only, at their own choice, on one of the aforementioned Sabbaths, most benignly conceded; and for the remaining fourteen Sabbaths, an Indulgence of seven years and also of forty days, applicable also to the souls detained in Purgatory, is most mercifully granted. This decree is valid forever, without any brief being required. Notwithstanding any contrary decrees. Given at Rome, from the Secretariat of the aforementioned Sacred Congregation, on the 21st of September, 1889. For the Most Eminent and Most Reverend Lord Cardinal CHRISTOFORI, Prefect, ALOISIUS, Cardinal, Bishop of SABINA. L. gg S. ALEXANDER, Bishop of OENSIS, Secretary.

FROM THE SACRED CONGREGATION FOR THE INDEX: Decree of the 6th of December, 1889, on the Feast Day. The Sacred Congregation of Eminent and Reverend Cardinals, by order of the Most Holy Pope Leo XIII and the Holy Apostolic See, which is entrusted with the task of preparing and publishing the Index of books of pernicious doctrine, and with their prohibition, expurgation, and permission throughout the Christian Republic, has ordered and orders the following works to be added to the Index of Prohibited Books, condemned and prohibited by the Sacred Congregation of the Holy Universal Inquisition: Jean de Bonnefon — Le Pape de demain. — Paris, E. Dentu, éditeur Libraire de la Société des Gens de lettres, 1889. — Decree, Feast Day, 4th of December, 1889. Acts, Volume XXII, page C CIVIL 20.

[*Latin ed. p. 306*]

306 FROM THE SACRED CONGREGATION OF THE INDEX: Therefore, no one, of whatever rank and condition, in any place, and in whatever language, may dare to publish or to publish again the aforementioned works, or to read or retain them, but they must be handed over to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of prohibited books. These matters, having been related to the MOST HOLY LORD OUR POPE LEO XIII through

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me, the undersigned S.I.C. from the Secret Archives, His HOLINESS approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on the 14th of June, 1889. CAMILLUS MARIA Cardinal MAZZELLA, Prefect. HYACINTHUS FRATI, of the Order of Preachers, Secretary of the Sacred Congregation of the Index. Place for the Seal. On the 17th of June, 1889, I, the undersigned, Magister Curiae, testify that the aforementioned Decree was affixed and published in the City. Vincentius Benaglia, Magister Curiae.

[*Latin ed. p. 307*]

307 APPENDIX IV. In which are recounted further Decrees of the Holy Congregation of Rites. LINZ. In order that the observance of liturgical prescriptions, as well as conformity with the Decrees of the Holy Roman Church, may be diligently observed in matters pertaining to divine worship, the Most Reverend Francis Joseph Rudigier, Bishop of Linz, humbly submitted the following questions for appropriate resolution to the aforementioned Holy Congregation:

I. Whether, on the Sunday of the third of October, on which day the anniversary of the dedication of the Cathedral Church and of all the churches simultaneously is celebrated in the Diocese of Linz, it is necessary for the priests who celebrate the anniversary of the dedication of their own church on that very day, to make mention of the dedication of the Cathedral Church in both Vespers, Lauds, and Mass, as has been done up to now?

II. Regarding the fact that this commemoration of the dedication of the Cathedral Church is to be performed, and indeed according to the rubrics, the question arises: whether in this prayer, "O God, who invisibly, etc.," those words should be changed to "may this temple be dedicated there" (and similarly in the Secret and the Postcommunion), as is noted in the calendar of some dioceses?

III. The Diocese of Linz obtained, in the year 1871 on the 28th of September, an indulgence to celebrate daily a votive Mass of the Blessed Virgin Mary, "Rorate," throughout Advent, except on the feast of the Immaculate Conception of the same Blessed Virgin; and on the days when the office for the octave of the same Immaculate Conception is celebrated; also, except on the feast of the Expectation of the Nativity of the Blessed Virgin. Now, a doubt has arisen as to whether, on the 10th of December, on the feast of the Translation of the House of Loreto of the Blessed Virgin (which was granted to the Diocese of Linz in the year 1870, on the 7th of July), the aforementioned votive Mass of "Rorate" may be said, or rather, whether a Mass of the feast should be said.

IV. In the Diocese of Linz, there prevails (as in many dioceses of the Austro-Hungarian Empire) the custom of extinguishing the candles of the acolytes and of the altar, while the Passion is sung in the solemn Mass

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of Palm Sunday; the question is asked whether this custom can be maintained?

The aforementioned Holy Congregation, after hearing the opinion of another expert from the Masters of the Apostolic Ceremonies, as well as the Reverend Assessor,

[*Latin ed. p. 308*]

308 APPENDIX IV. The Congregation itself, after deliberation, decided to respond as follows to the questions presented: Regarding I. Negatively. Regarding II. Provision is made in the preceding. Regarding III. Negatively regarding the first part, Affirmatively regarding the second. Regarding IV. Negatively, and the custom in this case is to be disregarded. And thus it declared and responded. On July 13, 1883. NITRIEN. Within the boundaries of the Diocese of Nitrien, in the town commonly called Dubnicza, a church was built and consecrated on June 25, 1789, which subsequently suffered two fires: the first in the year 1814, in which only the wooden framework of the roof and the tower were consumed by fire; the second in the year 1882, in which the framework struck the central arch of the nave of the church, so that the walls of the church were damaged on one side, and two crosses on the walls of consecration were destroyed. Consequently, during the restoration work, it happened that these same crosses were completely removed, and the remaining walls of the entire church, along with the other crosses of consecration, were repainted, and therefore new painted crosses had to be created. After these works were completed, the church of the Most Holy Trinity of the following year was blessed according to the prescriptions of the Ritual. However, the following questions immediately arose regarding the consecration of the church, which the Most Reverend Lord Augustine Roskovangi, the current Bishop of Nitrien, humbly submitted to the Sacred Congregation of Rites for appropriate resolution, namely: Question I. Given the circumstances described, must the aforementioned church be re-consecrated? And to this, negatively; Question II. Must all the crosses of consecration be re-consecrated again; or only those that were completely destroyed? And to this, affirmatively regarding the first part; Question III. Can such a re-consecration be performed, beginning the act of consecration with the antiphon "Precious Stones," etc., and with incense? Question IV. Must the prescribed fast be observed the day before for a new cross of consecration? And the Sacred Congregation, after considering the report of the undersigned Secretary, and after a careful written opinion from another of the Masters of the Sacred Liturgical Ceremonies, having considered all matters carefully, decided to respond as follows: Regarding I. Negatively, that is, no new consecration is to be performed. Regarding II. No cross is to be re-consecrated, but only the crosses that were removed are to be restored. Regarding III. and IV. Provision is made in the preceding. And thus it responded. On July 13, in the year 1883. PETROCORICEN. The

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Most Reverend Lord Nicholas Joseph.

[*Latin ed. p. 309*]

The Most Reverend Bishop of Petrocoricensis humbly submitted the following questions for appropriate resolution to the Congregation of Holy Rites:

Question I. Whether, in cathedral and collegiate churches, the verses for the faithful's soul should be recited at the end of the Third Hour before the Conventual Mass, as it appears to be prescribed in Rubric XXX, n. 3, of the Breviary, and as decreed by the Holy Rite Congregation on April 24, 1742, in Thelesina; or whether it should be omitted, as some contend, according to the decree of the same Holy Congregation on February 27, 1847, in Senen, ad 4.

Question II. Whether, in daily Masses for the repose of the soul, which in most parochial churches are sung without ministers by the celebrant alone, three prayers should be recited, or only one?

Question III. The Holy Rite Congregation, having been asked: at what hour is it permissible to begin the private recitation of Matins with the Lauds of the day preceding; it was deemed appropriate to respond on March 16, 1876, in one of Zacatecas: that the private recitation of Matins with the Lauds of the following day may begin when the sun is midway between noon and sunset. Now, it is asked whether the aforementioned resolution should be understood in such a way that one would not fulfill his obligation if he recited Matins with the Lauds of the day preceding before the sun was midway between noon and sunset? ix iv. 309 And the same Holy Congregation, after considering the report of the undersigned Secretary, and after a careful written vote of another of the Masters of the Apostolic Ceremonies, having considered all matters carefully, deemed it appropriate to respond as follows: To I. The Rubric should be observed. To II. One prayer should be recited. To III. Consult approved authors. And thus it responded and declared. On July 13, 1883. ARICHATEN. The Reverend Monsignor John Cameron, Bishop of Arichaten, states that in the diocese entrusted to him, portable altars are found, the sepulchers of which are closed only with cement: which could easily lose their relics, since they are moved from place to place as necessary, if they were only covered with stone, according to the declaration of the Holy Rite Congregation. Therefore, he humbly submitted the following questions for appropriate resolution to the same Holy Congregation:

I. Whether, in the future, in the consecration of altars in his diocese, he may use cement instead of stone, or a covering, for closing the sepulchers of the relics?

II. Whether he is obliged to remove the cement from each of the altar sepulchers that exist in the diocese of Arichaten, and to replace it with

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stone, as is customary? And to this, an affirmative answer is requested.

[*Latin ed. p. 310*]

IX, question V. OSTIA and VELITERNÆ. III. Whether it is necessary to repeat the entire consecration, because the modern compiler of the calendar, due to the hardness of the cement in the replacement to be made, might easily, for the use of the Diocese of Ostia and Veliternæ, and for the remaining relics and grains of incense, cause a mixture, as declared most humbly by the Sacred Congregation of Rites.

And the Sacred Congregation itself requested, namely:

I. Whenever, within the Octave, any feast occurs which has a Double or Semi-Double rank, whether any feast should be omitted from the procession.

To I. Negatively.

To II. Affirmatively.

To III. Affirmatively, but it must not be done in the case of the Octave, nor is it permissible to recite the respective Votive Office, which has been specially granted by the Most Holy Father Leo XIII, as if it were the Office of the day.

Here, however, the Sacred Congregation, using the faculties specially granted to it by the Most Holy Father Leo XIII, grants the use of the shorter rite.

This rite will be as follows: The Bishop, either personally or through assisting priests, shall, in this case alone, in the name of the Apostolic See, read the appointed Lessons of the Saints placed in the same altar, observing only the ceremonies prescribed in the Roman Pontifical, while the Relics are placed in the sepulcher, and a stone is placed on top; that is, so that the Confession or Sepulcher may be marked with chrism, and meanwhile the prayer is said, it is consecrated and sanctified, and after the hidden Relics with three grains of incense, and with the lid placed on and secured, the other prayer is said, "Deus qui ex omnium cohabitationis Sanctorum," and nothing else.

And thus it was declared, and it was commanded to be observed. August 13, 1883.

CASTELLANETEN. July 28, 1883.

In the Calendar of the Diocese of Castellanet, affixed on August 9.

[*Latin ed. p. 311*]

311 APPENDIX IV. This is the feast of Saint Stephen, Pope and Martyr, and in his Mass, the Gospel is read from the second chapter concerning the common experience of a single martyr. The same Gospel is appointed for the Vigil of Saint Lawrence the Martyr, which falls on the same day. Therefore, the Most Reverend Lord Caietanus Bacile, Bishop of Castellan-

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eta, inquired of the Sacred Rites Congregation: I. Is another Gospel to be read at the end of the Mass for the Commemoration of the Vigil of Saint Lawrence, and if so, which one? II. And if not, what is to be done concerning the Ninth Lesson in the recitation of the Office? The Sacred Congregation of Rites, after hearing the opinion of another Master of the Ceremonies and with the reference of the undersigned Secretary, decided that the following should be answered: Regarding I and II. In the case of a Vigil, only a commemoration is to be made, both in the Lauds of the Office of the day, and in its private Masses, with the usual beginning of the Gospel according to John, at the end. And thus it answered and decreed. On September 19, 1883. DIANEN. The Most Reverend Pro-Vicar General of the Diocese of Dianen, humbly requested the Sacred Congregation of Rites to declare on these matters: I. Whether, in the celebration of solemn Masses, a priest present should be considered a privilege proper to the dignitaries of the Cathedral Church, or rather a particular privilege? II. Whether a simple Canon, celebrating in place of the Bishop or a dignity hindered or absent, has the right to have a priest assisting? And the same Sacred Congregation, after hearing the opinion of another Master of the Ceremonies and the report of the undersigned Secretary, declared the following to be ratified: Regarding I. Neither is a privilege, and a decree was issued in Lucana on January 17, 1843. (1). Regarding II. The provision in the preceding, or negatively. And thus it declared and decreed. On September 19, 1883. LUCANA. The Rectors and Beneficiaries of the Church of Saint Mary, commonly known as in the Forum of the City of Lucana, humbly requested the Sacred Congregation of Rites to decide whether, in solemn Masses, when a Canon or any of the dignitaries are celebrating, another priest, wearing an alb, may assist, besides the Deacon and Subdeacon? The same Sacred Congregation, after hearing the report made by the undersigned Secretary, and after mature consideration of all things, decided to reply: "According to other decrees, an assistant is admitted in a solemn Mass where custom can be proven." And thus it replied. On June 17, 1848.

[*Latin ed. p. 312*]

312 APPENDIX IV. GOA. The Most Reverend Lord Anthony Sebastian Valente, the present Archbishop of Goa, humbly submitted the following question to the Congregation of Rites for a suitable resolution: In the churches of the aforementioned Archdiocese, the custom prevails of placing images of the Patron Saint on a throne, where the Most Holy Sacrament of the Eucharist is exposed, even outside of the time of such exposition. The question is asked whether this custom can be tolerated, since it cannot be abolished without great opposition and expense from the people? And the Sacred Congregation itself, after mature deliberation, and upon the report of the undersigned Secretary, judged that the following should be written: Let the Most Reverend Archbishop, as far as possible,

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take care that this custom be eliminated, and that the images be placed in another manner upon the altars. And thus it responded and wrote. On September 19, 1883. RAVENNA. The Most Eminent and Reverend Lord Cardinal James Cattani, Archbishop of Ravenna, inquired of the Sacred Congregation of Rites: Whether, in the General Ordination, which, as is fitting, is performed with singing, it is permissible to sing the Gradual and the Benedictus in half, or rather, whether they should be sung entirely? And the Sacred Congregation itself judged that the following should be written in response to this question: Affirmative, provided that the part which is not sung is recited aloud. And thus it responded and wrote. On September 19, 1883. RAVENNA. From the Most Eminent and Reverend Lord Cardinal James Cattani, Archbishop of Ravenna, the following questions were proposed to the Sacred Congregation of Rites for a suitable resolution: The Ceremonial of Bishops (lib. II, Cap. 24) states that the assisting priest or the subdeacon should give the kiss of peace to a certain acolyte or to the one who distributes it to the others of the choir. The question is asked: I. Whether the Ceremonial is directive in this matter, or whether it is a precept? II. And, assuming that it is affirmative with regard to the second part, whether the ancient custom of giving the kiss of peace only to the Canons can be tolerated? And the Sacred Congregation itself, upon the report of the undersigned Secretary, and after hearing the opinion of another of the Masters of the Apostolic Ceremonies, judged that the following should be written: Let the Ceremonial be observed, so that the kiss of peace is given both to the Canons and to the others of the choir. And thus it responded and wrote. On September 19, 1883. RAVENNA. The Most Eminent and Reverend Lord Cardinal James Cattani, Archbishop of Ra-

[*Latin ed. p. 313*]

XIV. Regarding certain matters. The Sacred Congregation of Rites has examined the following question, and declares as follows: In the Ordination of the higher Orders, is the prayer for the newly ordained to be said in a single conclusion with the Mass of the day? The question is: Which prayer of the Mass of the day should be said on Saturdays of the Four Times, specifically, is the prayer said after the fifth Reading, before the Epistle, to be omitted? The reason for the doubt is that, on the one hand, the proper prayer of the Mass of the day appears to be that which is said first, after the Kyrie, which corresponds with the Office; on the other hand, considering the Pontifical rubric, the proper prayer of the Mass of the day appears to be that said before the Epistle. Furthermore, the same Sacred Congregation, after hearing the opinion of another of the Masters of the Sacred Ceremonies, has declared and decreed as follows: The prescription of the Pontifical is to be observed. And thus it has declared and decreed. On September 19, 1883. SALOPIENSIS. The Most Reverend Lord Edmund

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Knight, Bishop of Salop, humbly submitted the following questions to the Sacred Congregation of Rites for appropriate declaration: Question I. In the work of the Reverend Father Martinucci, entitled "Manual of Sacred Ceremonies," book VII, chapter 2, number 47, concerning the inhibition to be read by the Archdeacon before the Ordinations, it is stated: "If the Ordination is performed by a Bishop from outside the diocese, by mandate of the Ordinary Bishop, then the aforementioned inhibition must always be read in the name of the Ordinary Bishop." The question is: How is this inhibition to be read if the Ordination is performed by a Bishop from outside the diocese, while observing the proper times and the vacant see? Is the Bishop from outside the diocese to be named, or rather, the Capitular Vicar? And, to the extent that the second part is affirmative, with what words is the Bishop from outside the diocese to be named? Question II. The Rite to be observed in the exposition and benediction of the Most Holy Sacrament, approved by the authority of the First Provincial Council, prescribes that the Priest, wearing a cotta, should use the amice, and adds: "If the exposition of the Most Holy Sacrament immediately follows another divine Office, and the Priest is wearing a cope of a color corresponding to the Office of the day, he should not leave the altar; then, without changing vestments, a humeral veil of white color should be put on. But if he is to leave and the exposition is to be considered a distinct function from the preceding Office, vestments of white color should be used. However, the use of a white cope for the exposition of the Most Holy Sacrament is not to be disapproved of, even if it immediately follows Solemn Vespers and the vestments are not to be changed; the question is: Would it be contrary to the general Decree of the Sacred Congregation, of September 7, 1816, if the Priest, before putting on the cope for Vespers, were to simultaneously put on...

[*Latin ed. p. 314*]

APPEI)IX 314: Concerning the wearing of the amict and stole for the Benediction of the Most Holy Sacrament, which will immediately follow Vespers? And, regarding whether this is prohibited, it is asked whether a priest, wearing a raincoat, should lay aside and resume these garments near the altar, having put on the amict and stole in the meantime, even if the garments are not of the color white? And the Sacred Congregation, after carefully considering the matter, based on the report of the undersigned Secretary, and after a thorough consultation with another of the Masters of the Ceremonies of the Apostolic See, decided that the following should be written: I. The prohibition should be read aloud in the name of the Vicarius capitularis, using these words: "The Most Reverend Lord N. N., of this Diocese, having been appointed Vicarius capitularis during the vacancy of the See, under pain of excommunication, commands, etc." II. It is permissible to put on the amict and stole if this is done before Vespers, and the

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exposition and Benediction immediately follow. And thus it was decided. On September 19, 1883. AQUEN. The Most Reverend Lord Joseph Maria Sciandra, the present Bishop of Aquen, humbly submitted the following questions to the Sacred Congregation of Rites for a suitable solution: From the Decree of the aforementioned Sacred Congregation of May 23, 1835, in Namur, X, it is stated that the free recitation of any office at will becomes obligatory when it has been ordered by the Ordinary and affixed to a day not impeded in the Diocesan Calendar. This is confirmed by the recent Decree of the City and the World, of July 5 of the current year, with regard to choral recitation; for after the once-for-all election of the offices by the Ordinary and their approval, their recitation becomes obligatory. On the contrary, with regard to private recitation, each member of the clergy may, at his discretion, recite the office of the day or the votive office of that day. Hence, the following questions are asked: Question I. Whether the freedom granted with regard to private recitation is limited only to the offices at will contained in the Decree of July 5 cited above, and whether the Decree of May 23, 1835, should therefore be maintained for offices preceding those at will? Question II. Whether, in drawing up the annual Order of Divine Office, the two offices, the feria and the other votive, should now be noted as optional, since the private recitation of either is left to the discretion of each individual? And the Sacred Congregation, after carefully considering the matter, based on the report of the undersigned Secretary, decided that the following should be written: I. Affirmative. II. In drawing up the Order of Divine Office, as usual, according to the rubrics, a particular rubric for the votive office of the current day may be added. And thus it was decided and ordered to be observed. On September 4, 1883.

[*Latin ed. p. 315*]

I. iv. DECREE. Because of the recent elevation of the Feast of the Immaculate Conception of the Blessed Virgin Mary and the Feast of Saint Joseph, her Spouse, Patron of the Catholic Church, to the rank of Double of the First Class, and since these Feasts are to be observed with greater solemnity, the Sacred Congregation of Rites deemed it fitting to insert both of the aforementioned feasts into the *Caeremoniale Episcoporum*, namely in book I, chapter XVI, number 4, which concerns the use of the Pallium, and in book II, chapter XXXIV, number 2, where the days are listed on which Bishops are accustomed to celebrate solemnly; thus, both of these feasts are to be included. Furthermore, the Most Holy Pontiff Leo XIII, having approved the opinion of the Sacred Congregation itself, which was communicated to him through the undersigned Secretary, ordered that such an addition be made in the new editions of the aforementioned liturgical book. September 9, 1883. DOUBTS. Since certain doubts have arisen concerning the general indult granted by the Most Holy Pope Leo XIII through a Decree of the Sacred Congregation of Rites dated July 5th of the past year, regarding the

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recitation of Votive Offices in place of the weekday Offices throughout the year, the same Sacred Congregation considered it its duty to examine these matters diligently and, consequently, to issue an authentic declaration. 315 Therefore, the same Sacred Order, on the aforementioned date, convened a private assembly at the Vatican to examine the following questions: I. Are the words of the Indult, concerning the private recitation, to be understood as applying only to those members of the clergy who are bound by no canonical title to the choir, or to all? II. Is it permissible for the statutes concerning the consent of the Chapter, or Community, approved by the Ordinary, regarding the recitation of the Votive Office, to be withdrawn at any time? III. Can the Indult itself be accepted in such a way that, on certain days of the week, the weekday Offices may be recited, while on other days, the Votive Offices may be recited in choral recitation? After carefully considering all matters, the Most Reverend Fathers responded as follows: To I: Affirmative. To II and III: Negative. And having written, declared, and ordered this, they did so on November 10, 1884. DOUBTS. The following questions were proposed to the Sacred Congregation of Rites for a suitable declaration: Question "I. Since, according to the Decree of July 5, 1883, those who are not bound by any canonical title to the choir are free to recite either the weekday Office or the Votive Office on certain weekdays, except for...

[*Latin ed. p. 316*]

316. Regarding the observance of this feast, and whether the prescribed votive office should be recited, the following questions are raised: Is the obligation still limited to reciting only the votive office, where this office has previously been granted a special privilege to a particular diocese, so that on these feast days, no choice is given between the regular office and the votive office? And, if so, is this option to be extended to the days included in the new Indult of July 1, 1883, except for those previously mentioned?

II. During the Paschal season, in the votive office for the Passion, is the "Alleluia" to be added, and are the proper antiphons of that time to be observed?

III. In the rubric preceding the votive offices recently granted, it is stated that these offices should include both the commemoration and the Ninth Hour reading from the feast day itself. Therefore, can these votive offices be recited, not only in place of the regular office, as stipulated in the decree of July 5, 1883, but also in place of the office of a simple feast (e.g., the feast of Saint Agnes), which is assigned to that day alone in the calendar?

IV. From the same rubric, the Vespers of the votive office of the current rite are to be arranged according to the rubric on "concurrent offices," if on the preceding or following day, another office with the Ninth Hour occurs. However, if the votive office coincides with another votive office, or with another office of the same rank, is it always necessary, in this case,

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to recite the Vespers according to the aforementioned general rubric of the Breviary, title 3, paragraph 4, from the chapter of the following day, with the commemoration of the preceding office? Or, should the dignity of one votive office be considered superior to another, according to paragraph 2 of the same rubric? And what is to be done, in particular, when the votive office of the Most Holy Sacrament coincides with the office of the Passion of Our Lord Jesus Christ?

V. Since the feast of the holy Apostles Simon and Jude falls on the second day of the week, what prayer is to be used in the Second Vespers for the Commemoration of the Apostles, for the votive office of the Apostles, which is recited on the following third day of the week?

VI. If the votive office is recited in the choir on the vigil of a feast, or on other feasts that have their own Mass, are two Masses to be celebrated, one of the vigil or feast, or rather, is only one Mass of the vigil or feast to be celebrated, with the commemoration of the votive office?

VII. When the votive office of All the Apostles is recited on the third day of the week, should the commemoration of the Apostles Peter and Paul be omitted in the prayers at the Vespers and Lauds?

Regarding these questions, which were reported by the aforementioned Secretary, the Holy Congregation, after careful examination, has responded as follows:

[*Latin ed. p. 317*]

ix iv. Regarding I. Affirmative to the first and second parts. Regarding H. Affirmative, and the color red should be used throughout the year. Regarding III. Provision is made in the Rubrics of the Offices. Regarding IV. Concerning 1. Affirmative to the first part, negative to the second. Concerning 2. All of the above, nothing of the following. Regarding V. The Prayer for certain places is to be said on the 29th of June, namely: "O God, who gladdens us with the commemoration of the Blessed Apostles; grant, we beseech Thee, that we may be instructed by the examples of their merits. Through our Lord." Regarding VI. Affirmative to the first part, negative to the second. Regarding VII. Negative. And thus it was declared and recorded. On November 24, 1883. FOR THE WHOLE WORLD. God, in His mercy, raised up for the defense and support of the militant Church, the most holy man, Dominic Guzman, the renowned founder and father of the Order of Preachers, who, having engaged in the struggle for the Catholic Church, relied most of all on prayer, which he first instituted under the name of the Holy Rosary of Mary, and which he and his disciples spread far and wide. This wonderful form of prayer has always been held in high esteem by Catholics, as a noble token of Christian piety. Wherefore, Our Most Holy Lord Leo XIII, seeking help from Jesus Christ through Mary, the Virgin Mother, for the present needs, decreed that the entire month of October should be dedicated to the prayers of the Rosary throughout the

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Catholic world this year, by means of Encyclical Letters; everywhere, the sacred pastors and the faithful people, obeying the will of the Supreme Pastor, have shown splendid proofs of their piety and of their most tender love for the Mother of God, fostering the firm hope that, with the help of the same Blessed Virgin, they will obtain more effective assistance from the heavenly Father in the present calamities, both private and public, of the Christian commonwealth. Indeed, Our Most Holy Lord, desiring above all to increase devotion to the most august Mother of God, and to encourage the faithful to observe this practice, graciously and readily accepted the humble petitions offered to him by the Most Reverend Father Joseph Maria Larroca, the Master General of the Order of Preachers, namely, that the invocation of the Queen of the Rosary be added to the Litany of Loretto, which is already in use among the Dominican family. Therefore, His Holiness commanded that the other invocations of the Litany of Loretto be...

[*Latin ed. p. 318*]

318 In the name of the blessed Virgin Mary, and this shall be added henceforth throughout the Church, namely, at the place called Regina Sacratissimi Rosarii, pray for us. Furthermore, He commanded that Letters in the form of a Brief be dispatched concerning these matters. Notwithstanding any contrary opinions. December 10, 1883. CONGREGATIONIS PIORUM OPERARIORUM ix iv. Can a small image, commonly called the "Fervorino," be placed near the Blessed Sacrament? Question III. Must the aforementioned image remain uncovered during the exposition of the Blessed Sacrament? And the Sacred Congregation, after careful consideration and having heard the opinion of another from the Masters of the Ceremonies of the Apostolic See, has decided as follows: To I. Affirmative, provided that the exposition of the Blessed Sacrament is properly performed, and the altar is properly prepared. To II. Affirmative. To III. During such exposition of the Blessed Sacrament, the statue in question may remain visible. And thus it was written and declared. December 14, 1883. In the church under the title of St. Nicholas, commonly called "alla Carità a Toledo," annexed to the house of the Congregation of the Pious Workers in the city of Naples, pious exercises are customarily held on certain feast days before a small wooden altar, on which the image of Our Lord Jesus Christ, under the name "Ecce Homo," is venerated by the faithful, and the Holy Sacrifice of the Mass is celebrated, and the Blessed Sacrament is exposed, whereby the faithful receive a blessing. Concerning these pious practices, some doubts have arisen, and the Reverend Father Peter Centofanti, today General Prefect of the Congregation of the Pious Workers, humbly requested that the following doubts be clarified: Reverend Father Peter Centofanti, General Prefect of the Congregation of the Pious Workers, humbly submitted the following for a suitable resolution: Question I. In the Kingdom of Spain, a

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wooden altar has been erected for the exposition of the Blessed Sacrament of the second class, and the following difficulty arises in preparing the diocesan calendars: St. Peter of Alcantara has a proper feast day.

[*Latin ed. p. 319*]

On the tenth day before the Kalends of November, that is, on the 19th of October, which is the day on which the Octave of the Blessed Virgin Mary of Columna is celebrated throughout the Kingdom of Spain. Whether, by the grace of the double rite of the second class, Saint Peter of Alcantara should be celebrated on his proper day, namely the 19th of October, thereby permanently transferring the Octave of the Blessed Virgin Mary of Columna to the simple rite, as indicated in the table, or whether the Octave of the Blessed Virgin Mary should be celebrated on the 19th of October, and Saint Peter of Alcantara, with his double rite of the second class, should be transferred to the first free day, as has been done up to now, with equal joy in the rite?

II. Most recently, by Decree of the City and the World, dated July 5th of the past year, a general indult is granted to the Chapters, so that, with the consent of the Chapter itself or the Community, approved once and for all by the Ordinary, Votive Offices may be celebrated annually, in place of the Feria Offices, except on the days themselves excepted in the Decree. On this occasion, it was deemed fitting to humbly implore the Most Holy Congregation to deign to declare: I. Whether, as soon as said change is legitimately made, the conventual Mass must be sung of the respective Votive Office, so that the Mass may be in accordance with the Office, or of the Feria Office that occurs? II. And, assuming an affirmative answer to the first question, whether such a Votive Mass should be said in the Choir after Terce, or after None? III. Whether, in Lent and on the fast days, besides that Votive Mass that is in accordance with the Votive Office, another Mass of the Feria or Vigil must be sung, and also for Benefactors, as the other Conventual Masses are, and whether both should be applied?

Furthermore, the Sacred Congregation, having heard the report of the undersigned Secretary, and another opinion from the Masters of the Apostolic Ceremonies, has ratified these doubts as follows:

To I. Negative to the first part, affirmative to the second.

To II. Provision has already been made in the rubric for Votive Masses celebrated throughout the year. And so it declared and wrote.

December 14, 1883. TORNACEN.

By decree of His Holiness, Pope Pius IX, on February 11, 1848, it was granted that in the Diocese of Tornacen, the Votive Office of the Immaculate Conception of the Blessed Virgin Mary should be recited under the double rite on all Saturdays not prohibited. Furthermore, concerning the application of this Indult to Saturdays not free, a doubt has arisen since the recent Decree of Our Most Holy Lord, Pope Leo XIII. Hence, the Most

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Reverend Isidore Joseph du Rousseaux, the present Bishop of Tornacen, has requested the Sacred Congregation of Rites to declare: whether, by virtue of the aforementioned Indult...

[*Latin ed. p. 320*]

In the year 1848, it was inquired whether, within the Diocese of Tornacén, it was permissible to recite the office with a double rite, along with the Mass of the Immaculate Conception of the Blessed Virgin Mary, every Sabbath, under an Indult granted on the 5th of July of the current year. And the Sacred Congregation, in response to the report of the undersigned Secretary, replied as follows: either the old Indult must be strictly observed, or the new one, with the old one entirely abandoned. And thus it responded and declared. On December 22, 1883. FROM LINARES. The Most Reverend Lord Ignatius Montes de Oca, the present Bishop of the Diocese of Linares, stated that, in his Cathedral Church, on solemn days, the Matutine Reading is usually recited not from the hebdomary, but by the President of the Chapter; and he humbly requested the Sacred Ritual Congregation to determine whether such a custom could be lawfully continued. And the Sacred Congregation, in response to the report of the undersigned Secretary, and after hearing the opinion of another of the Masters of the Apostolic Ceremonies, having carefully considered all matters, judged it fitting to respond as follows: the custom in this case is an abuse and therefore should be discontinued. And thus it responded and declared. On January 11, 1884. FROM LINARES. In the Cathedral Church of the Diocese of Linares in Mexico, it was customary on certain feasts to solemnly chant the Mass through the offering of visiting faithful, to which the Chapter attended, and the Mass, the duty of chanting which belonged to the same individuals on those days for the Benefactors, was celebrated by the hebdomary. Doubting the legitimacy of this custom, the Most Reverend Lord Ignatius Montes de Oca, the present Bishop of Linares, humbly requested the Sacred Ritual Congregation to determine whether it could be lawfully continued, especially considering the lack of income of that Church. The Sacred Congregation, in response to the report of the undersigned Secretary, and after carefully considering the opinion of another of the Masters of the Apostolic Ceremonies, judged it fitting to respond as follows: the aforementioned custom can be tolerated, provided that the Chapter attends the Mass celebrated for the Benefactors. And thus it responded. On January 11, 1884.

[*Latin ed. p. 321*]

321 FROM THE CONSISTORY ACTS, on the second day of December, the 30th, in the year 1889. A public Consistory was held in the Royal Hall at the Vatican, in which His Most Holy Father, Pope Leo XIII, presented the red hat to the Most Reverend Cardinals Francis Mary Benjamin Richard, Archbishop of Paris; Joseph Alfred Foulon, Archbishop of Lyons; and Fran-

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cis de Paula Schönborn, Archbishop of Prague, who had been created and publicly announced in the Secret Consistory on May 24th of the same year. During this solemnity, Guido Maniconi, Knight of the Order and Consistory Advocate, presented the second cause for the beatification of the venerable servant of God, Vincent Pallotti, priest of Rome. After the public Consistory, a secret Consistory was held in the upper buildings of the Vatican Palace, where the Most Reverend and Right Reverend Cardinal Lorenzo Perula, of the Sacred College of Cardinals of the Holy Roman Church, presented the aforementioned document to His Most Holy Father, who entrusted it to the Most Reverend and Right Reverend Cardinal Melchers, and, according to custom, the aforementioned three Most Reverend and Right Reverend Cardinals Richard, Toulon, and Schönborn spoke. Thus, the Supreme Pontiff addressed the Cardinals:

ADDRESS:

Venerable Brothers,

We have recently received a timely and welcome report from the distant shores of America, as well as from Switzerland. What Catholics have greatly desired, namely, that they might have certain large schools of their own for the education of youth, they have now achieved through their own efforts, with the establishment of institutions in Washington, Ottawa, and Freiburg, dedicated to higher learning: in which, as it were, the sacred law is observed, to unite the safety of the faith with the elegance of instruction, and to instruct young people not less in religion than in the best arts. In this matter, we understand how much grace is held, as stated in the Acts, Volume XXII, page 258.

[*Latin ed. p. 322*]

322 FROM THE CONSISTORY ACTS, the foresight and constancy of the Bishops, as well as the private efforts made, deserve to be noted. Both deserve praise for having, through united counsel and endeavors, produced a memorable benefit, by which not only the Church, but also a great city, may enjoy its salvation. For we see, Venerable Brothers, the fruits of such undertakings to be future: and meanwhile, this thought greatly comforts us, that in the cities mentioned, the Catholic name can freely flourish, defended by the laws and the equity of men. These indeed, sufficiently pleasant events, make the harshness of the things done at home more bearable. For here, the enemies do not cease to attack the Church; nay, they even reveal their hostile intentions more boldly each day, and they do not fear to seek glory with ease. The words of a certain private individual, recently spoken, sufficiently attest this, when, in a large and deliberately convened assembly, he openly indicated what the rulers of Italian affairs think and intend concerning the Church and the Roman Pontificate. And not dissimilar voices were heard in the City, in June, in which, on certain days, through unusual and clamorous expressions, not the honor of renegades, but the shame of the Church, was

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sought. Thus, it is easily apparent that both are inclined in the same direction, and that it is entirely their common purpose to wage hostility against the ancient religion, and, under the auspices and guidance of wicked sects, to tear away the entire Italian people, if possible, from the embrace of the Church. You have, Venerable Brothers, learned of these sentiments, full of importunity and audacity. The Roman Pontiffs have been allowed to attack the rights of the Roman See in Rome, and to diminish them to such an extent that their words are no longer considered to have more weight than the accounts of private households. And that which has been taken from Us, they claim to have been acquired by new possessors by a firm and perpetual right, as if a right could be born from injustice and violence. It is, indeed, superfluous here to recall the entirely special titles, for the sake of which the Apostolic See claims and will claim its right in the City. Likewise, it is unnecessary to mention the nature of the civil principate of the Roman Pontiffs, which, since it pertains to the effective protection of the freedom and dignity of the apostolic ministry, has its own unique reason, and differs considerably from the common notion of principalities. But we cannot, nor must we, remain silent when the Apostolic See is subjected to this renewed onslaught of hostile forces. Especially because...

[*Latin ed. p. 323*]

FROM THE CONSISTORY ACTS 323: In the defense of Our rights, We do not propose to protect the interests of any mortal person as Our goal, but We seek higher and more important things. Namely, We desire that the Christian faith be preserved in its integrity, as it ought to be: for its safety is endangered when those who govern the people assign to the state, without limit or law, the authority that belongs to human reason, which, in other words, is nothing other than to utterly reject everything that has been handed down by God, and to completely depart from the Church. Therefore, it is not merely a matter of ensuring that the state has no power over religion, and that equality before the law is granted to all without discrimination, in which very equality is unjust and supremely harmful: but it is also desired to wound the Catholic name with a public declaration of war, and to join forces with the worst enemies of Jesus Christ. It is scarcely believable that this has come to pass, and that in the Italian people, who, by the grace of God, have seen the light of Christian truth, and have felt and religiously guarded the greatest and most singular benefits of the Divine for nearly nineteen centuries. But the facts are before our eyes. And they do not speak more threateningly than they act: for they strive by every means to accomplish their designs, and therefore they do not cease to twist and pervert institutions and laws to the detriment of the Church. As you know, the beginning of the new penal code is approaching next January. When deliberations on this matter were held last year in the assembly of legislators, We did not fail to point out, in this very place, those

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aspects that, under the guise of punishing licentiousness, truly pertain to diminishing the just freedom of the clergy, and hindering their work. We stated that this was a great detriment to the Church, which, being a society divinely constituted in its own right, and formed in the image of perfect society, ought not to be subject to the authority of any human power in the exercise of its functions. It was also argued that an injustice was being done to the entire order of the clergy, since, without any probable cause, and with contempt for the authority of sacred law, particular laws were being established with particular severity for them. These, however, have been approved and enacted through a change in the votes. Therefore, mindful of Our apostolic office, and remembering the objections We made at that time, We now renew them, having seen the injustice that has been perpetrated. But you see another wound being inflicted upon the Church: We understand the law concerning Charitable Works, which has recently been approved with hasty votes: and they themselves admit that it is...

[*Latin ed. p. 324*]

3-24 FROM THE CONSISTORY ACTS, as a stepping stone to other matters; namely, to eliminate all vestiges of religion through the institutions of the state. It is certainly fitting with such a purpose that the reasoning of the law: whose force is primarily to extinguish, in part, whatever has been established for the sake of piety, and to transform it, in part, into another form and nature, so that such a change truly appears to result in the subversion of established institutions. — But above all, it is neither in accordance with piety nor with justice, that almost everything which has been established either by testament, for the sake of divine worship, or for the expiation of the dead, or to endow young women aspiring to colleges of nuns, should be considered temporary and void, and that others should be converted to other uses. In this, the will of the authors is clearly violated, because they certainly intended their money to be used for those purposes mentioned, and in no way for others: these purposes, since they pertain to religion, to the solace of the pious, and to the perfection of virtue, are as immutable and perpetual as the rights and duties that bind man to God. — But we cannot pass over in silence the fact that in the Decuries, almost all are co-opted to administer auxiliary matters, without exception, even women, while priests are not permitted. This, it is said, has been approved because of the known will of the bishops and the Roman Pontiff; so that there is no doubt as to the intention for which this law, of which we are speaking, was enacted. — They say that secular beneficence must be such that it may be more pleasing: for it is customary for people to receive more readily, and to be comforted, when they feel that Christian charity is present. But it is a sad thing to find among Christians those who are so mistaken in their estimation of that virtue which is the foremost and the queen of all others. For sincere goodwill in helping others can only arise from an inner

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benevolence: and this, truly, must reside either solely or primarily in the hearts of those who consider each individual as almost another self, and who love others as brothers: who know that others, just as they are, are begotten by God as their Father, and are redeemed by the blood of Jesus Christ, and are called to the same happiness in heaven. And to love them so dearly, even when they are poor and afflicted, so that Jesus Christ embraces them, and considers the benefit conferred upon them as truly placed with Him, and obligates Himself by that benefit. Charity accompanied by these sentiments is so far from breaking the hearts of the poor, that it rather elevates them to such a degree—

[*Latin ed. p. 325*]

FROM THE CONSISTORY ACTS 328, concerning the dignity, the extent of which a man, without the light of heavenly doctrine, could not even conceive. Now, this kind of charity is sought in vain outside the Church of God, which Jesus Christ, the heir of wisdom, discipline, and His gifts, left as the only one: and which, having so well obeyed and conformed to the counsels of its divine Author, has always given great proofs thereof. Is there any kind of trouble to which the Church has not sought to provide relief, not only through maternal piety, but also through excellent prudence and vigilance? Thus, through its works and authority, or at least through its counsel, grace, and protection, consolations suitable to various misfortunes have been found everywhere among the nations, but more especially in those places where the Church flourishes and the study of Christian virtues is greater. Italy is outstanding in this regard, which, by maintaining the Catholic faith, both in times of prosperity and in times of adversity, has been most abundantly fruitful in benefits of this kind; therefore, it is all the more inhuman and unworthy of the Italian people to have sought to deprive the Church of the power of public beneficence. — Indeed, certain passages, wrongly placed, were found: but the light of truth, from a source they least expected, emerged. The institutions concerning the administration of affairs splendidly refuted the falsely fabricated accusation. And, as if to add to the injuries, another audacious act was committed, by which those who hold power in civil affairs invaded the very administration of sacred matters. Venerable Brothers, you easily understand what the prayer concerns: namely, what has been perpetrated against the venerable Brother Aloysius, titular Bishop of Troas, Ordinary of Aquaeviva and Altamura, in these very recent months. You know the course of events: first, the Bishop of Troas was deprived of the goods of both Churches; then he himself was removed from office; he was ejected from his houses; and, as if the matter were purely civil, the administration of both Churches was transferred to another, entirely within the jurisdiction and under the power of political authority. By this action, not only the laws of the Church were broken, but also the native rights of Our pontificate were violated. Therefore, we lament

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with great sorrow such an injury; and, at the same time, we condemn and reject with apostolic authority all that has been decreed and done in this matter. As for the clergy and the people of those Churches, we admonish both to seriously consider what is required of them by their office. As it is fitting, those who hear the dictates of political power should be attentive to matters of a civil nature,

[*Latin ed. p. 326*]

326 FROM THE CONSISTORY ACTS, it is clear that in matters concerning the governance of souls, no one can possess authority other than that which is legitimately granted by Our predecessors, unless they wish, which God forbids, to separate themselves from this center of Catholic unity. Now, before Bishops are appointed to vacant Sees, for the greater glory of God and the benefit of the Church, We create two outstanding men Cardinals of the Holy Roman Church, whom, however, for just reasons, We reserve in Our hearts, to be made public at Our discretion whenever We deem it fitting, along with the necessary and appropriate dispensations, derogations, and clauses. In the name of the Father, and of the Son, and of the Holy Spirit. Amen. After these words, the Most Holy Father proposed the following Sees: THE METROPOLITAN CHURCH OF HISPALE, vacant, due to the resignation of the Most Reverend and Right Reverend Lord Zephyrino, Cardinal Priest of the Title of Saint Mary above Minerva, of the Holy Roman Church, Gonzalez and Diaz Tunon, willingly and freely, at the hands of HIS HOLINESS, having been carried out and admitted by the SAME, with the effect of the resignation suspended until the possession of his Successor, with the favor of the Most Reverend Father Benedict Sanz and Forés, Archbishop of Valladolid, transferred to the aforementioned See of Hispale, for presentation to the Most Serene Queen Catholica Regent. THE METROPOLITAN CHURCH OF VALLISOLETA, vacant, due to the transfer to the Metropolitan See of Hispale of the Most Reverend Father Benedict Sanz and Forés, with the favor of the Most Reverend Father Mariano Michael Gomez, Bishop of Vitoria, transferred to the same See of Valladolid, for presentation to the Most Serene Queen Catholica Regent. THE METROPOLITAN CHURCHES OF MUNICH AND FRIEDEN, vacant, due to the death of the Blessed Memory of Anthony Steichele, the last Archbishop of that See, deceased outside the Roman Curia, with the favor of the Most Reverend Father Anthony Thomas, Bishop of Passau, transferred to the aforementioned Sees of Munich and Friedingen, for nomination, by virtue of an Apostolic Indult, of the Most Serene Prince Luitpold, Regent of the Kingdom of Bavaria. THE METROPOLITAN CHURCH OF URBINO, vacant, due to the transfer to the See of Modena of the Most Reverend Father Charles Mary Borgognoni, with the favor of Nicodaro Vampa, Priest of Fano. THE EPISCOPAL TITULAR CHURCH

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OF LAMPSACEN, under the Archbishop of Cyzicus, vacant, due to the transfer to the Cathedral See of Iscla of the Most Reverend Father Joseph Candido, with the favor of the Most Reverend Father Ra-

[*Latin ed. p. 327*]

FROM THE ACTS OF THE CONSISTORY 327: Raphael Bianchi, Bishop of Clusium and Pientium, was transferred to the titular Church of Lampsacus. The Cathedral Church of Victoriana became vacant through translation to the Metropolitan See of Valladolid. The Reverend Father Mariano Michaelis Gomez, with the favor of the Reverend Father Raymond Fernandez Pierola and Lopez de Luzuriaga, the Bishop of Abulensis, was transferred to the Church of Victoriana, for presentation to the Most Serene Catholic Queen Regent. The Cathedral Church of Tiraspole became vacant through the resignation of the Reverend Father Francisco Xaverius Aloysius Zottmann, who willingly and freely relinquished it at the hands of His Holiness, and was accepted by the same, with the favor of the Reverend Father Zerr, titular Bishop of Diocletianopolis. The Suffragan See of Uladislaviensis became vacant, with the favor of the Reverend Father Henry Peter Delega Kossowski, titular Bishop of Serrae, and Suffragan and Administrator of Plock. The Cathedral Church of Urbevetan became vacant through the death of the Most Reverend Joseph Ingami, the last Bishop of that See to die outside the Roman Curia, with the favor of the Reverend Father Dominic Bucchi Accica, Bishop of Nursia. The Cathedral Church of Assisi became vacant through the death of the Most Reverend Caietan Lironi, the last Bishop of that See to die outside the Roman Curia, with the favor of the Reverend Father Nicanor Thomas, Prior, a priest of Cagli. He was born of legitimate, Catholic, and honorable parents in Cagli, and had surpassed his fiftieth year, and had recently received the doctorate in sacred theology and in both canonical and civil law. He had previously been honored with the dignity of Praepositus of Cagli after ordination, was appointed Professor of philosophy and theology in the seminary of Cagli, and was often appointed as an examiner for the synod and as a preacher. In the episcopal ministry, he was constituted as an assistant general vicar, and nine years ago, when the See of Senigallia was vacant, he renounced the office of capitular vicar, and was added to the intimate circle of His Holiness's chamberlains. The Cathedral Churches of Clusium and Pientium, perpetually and canonically united, became vacant through the translation of the Reverend Father Raphael Bianchi to the titular Episcopal Church of Lampsacus, with the favor of the Reverend Father James Bellucci, a priest of the diocese of Soana and Pitilia. He was born of legitimate, Catholic, and honorable parents in the diocese of Soana and Pitilia, and had surpassed

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his seventy-fifth year.

[*Latin ed. p. 328*]

328 FROM THE CONSISTORY ACTS, a priest, having previously received a doctorate in sacred theology and in canon law, was appointed as the general vicar for spiritual matters for the same diocese by the Most Reverend Father Anthony Shrolli, Bishop. However, upon the Antistite being transferred to the titular archiepiscopal Church of Naupactus, both united dioceses renounced their apostolic administrator.

THE CATHEDRAL CHURCH OF ALBEN was vacant, due to the translation of Father Lawrence Charles Pameiro, of the Order of Preachers of Saint Dominic, to the metropolitan See of Vercelli, with the favor of the Reverend Joseph Francis Re, a priest of the Archdiocese of Turin. He, born of legitimate, Catholic, and honorable parents in Butileria, near Pompeii, in the Archdiocese of Turin, and having surpassed the forty-first year of his age, having previously received a doctorate in sacred theology and in both laws, was added among the synodal examiners, and was previously elected as the general vicar for spiritual matters, and has now renounced his position as canon of that metropolitan Church.

THE CATHEDRAL CHURCH OF SPLATEN was vacant, due to the death of the Most Reverend Mark Calogerà, the last bishop to die outside the Roman curia, with the favor of the Reverend Philip Francis Nakic', a priest of the Archdiocese of Zadar, by nomination of the Most Sacred Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, and also King of the Kingdom of Dalmatia, by virtue of an Apostolic Indult. The Reverend Francis Nakic' was born of legitimate, Catholic, and honorable parents in the place now called Salboe, in the Archdiocese of Zadar, and having surpassed the fifty-second year of his age, he was a master of religion, a judge, a synodal examiner, a counselor of the archdiocesan tribunal, and a consultant in the court of appeals, the director of an institute for girls and orphans, and has now renounced his position as canon of the metropolitan Church of Zadar.

THE CATHEDRAL CHURCH OF SUESSIONEN was vacant, due to the translation of Father Odon Ehibaudier to the metropolitan See of Cambray, with the favor of the Reverend John Baptist Theodore Duval, a priest of the Archdiocese of Rouen, by nomination of the most illustrious man Francis Mary Sadi-Carnot, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the city of Le Havre, in the Archdiocese of Rouen, and having surpassed the sixty-fifth year of his age, was honored with the title of Archpriest, and was a canon.

[*Latin ed. p. 329*]

FROM THE CONSISTORY ACTS 329. The General Chamberlain, named Rothomagensis, who until now has been the Parish Priest and Archpriest

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of Santa Maria in the city of Portus Gratiae, commonly known as Le Havre, has resigned.

The Cathedral Church of Carnuten is vacant, due to the death of the Very Reverend Louis Eugenius Regna, the last of that See's bishops to have died outside the Roman Curia, with the favor of the Reverend Father Francis Lagrange, a priest of the Archdiocese of Bituricensis, at the nomination of the Most Illustrious Francis Maria Sadi-Carnot, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the place commonly called Dun-le-Roi, now Dun-sur-Auron, in the Archdiocese of Bituricensis, and having surpassed sixty years of age, having previously been awarded a doctorate in sacred theology, was endowed with the title of General Vicar in Spiritual Matters for the Archdiocese of Aurelianensis, and having fulfilled the duties of that Episcopal administration, and having until now been a Canon of the Metropolitan Church of Parisiensis, has resigned.

The Cathedral Church of Briocen is vacant, due to the death of the Very Reverend Eugenius Angelus Maria Bouché, the last of that See's bishops to have died outside the Roman Curia, with the favor of the Reverend Father Peter Fridericus Fallieres, a priest of the Diocese of Agennensis, at the nomination of the Most Illustrious Francis Maria Sadi-Carnot, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the place called Mézin in the Diocese of Agennensis, and having surpassed his fifty-fifth year, having previously been awarded the degree of Bachelor in the Faculty of Theology, was appointed General Vicar in Spiritual Matters for the Diocese of Ambianensi, and subsequently for the Archdiocese of Burdigalensi.

The Cathedral Church of Vallis-Vidonis is vacant, due to the death of the Very Reverend Louis Victor Aemilius Bougaud, the last of that See's bishops to have died outside the Roman Curia, with the favor of the Reverend Father Julius Cleret, a priest of the Diocese of Constantiensis, at the nomination of the Most Illustrious Francis Maria Sadi-Carnot, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the place called Carentan in the Diocese of Constantiensis, and having surpassed his fifty-fourth year, having successively fulfilled the duties of Professor in the small diocesan seminary of Sancti Laudi, Saint-Lô, and then as Archpriest-Parish Priest of his native Diocese.

The Cathedral Church of Sanctideodati is vacant, due to the death of the Very Reverend Maria Camilla Albertus de Briey, the last of that See's bishops.

[*Latin ed. p. 330*]

330 FROM THE CONSISTORY ACTS, outside the Roman Curia, the following vacancies occurred:

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The See of Dijon, vacant due to the death of the Most Reverend Stephen Mary Alphonse Sonnois, a priest of the Diocese of Dijon, by the nomination of the most illustrious Monsieur Francis Mary Sadi-Carnot, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the place commonly called "La Mergelle" in the Diocese of Dijon, having surpassed his sixty-first year, having served as a professor of philosophy in his diocesan seminary in Jouvey, and subsequently as a parish priest in the parish of Santeney, was, until now, a parish dean in his Diocese of Dijon, and has been appointed among the honorary canons of Dijon.

The Cathedral Church of Baion, vacant due to the death of the Most Reverend Francis Alfred Fleury-Hottot, the last of that See outside the Roman Curia, by the nomination of the Most Reverend Francis Anthony Jauffret, a priest of the Diocese of Marseilles, by the nomination of the most illustrious Monsieur Francis Mary Sadi-Carnot, President of the French Republic. He, born of legitimate, Catholic, and honorable parents in the place now called "La Dotât," in the Diocese of Marseilles, having surpassed his fifty-sixth year, having received a doctorate in sacred theology, and having been Prefect of the ecclesiastical college commonly called "École de Belsunee" in Marseilles for seventeen years, is now attached to the Chapter of the Cathedral Church of Marseilles.

The Cathedral Church of Millerden, vacant due to the translation of the Most Reverend Thomas Costa and Fornaguera to the Metropolitan See of Tarragona, by the nomination of the Most Reverend Joseph Meseguer and Costa, a priest of the Diocese of Derthusa, for presentation to Her Most Serene Catholic Majesty the Regent. He, born of legitimate, Catholic, and honorable parents in the place commonly called "Vdlabona" in the Diocese of Derthusa, having surpassed his forty-sixth year, having received a doctorate in both sacred theology and canon law, was, until now, the Dean of the Chapter in Vallisoleta.

The Cathedral Church of Mindonien, vacant due to the translation of the Most Reverend Joseph Mary de Cos and Macho to the Metropolitan See of Saint James of Cuba, by the nomination of the Most Reverend Emmanuel Fernandez-Castro, a priest of the Diocese of Oviedo, for presentation to Her Most Serene Catholic Majesty the Regent. He, born in the city of Oviedo, having surpassed his forty-fifth year, in sacred...

[*Latin ed. p. 331*]

331. Having recently received the doctorate in theology, he had served as Spiritual Director in his own seminary, acting as Vice-Rector and even as Rector; now, the Canon of the Church of Ovetensis has resigned. The CATHEDRAL CHURCH of GANDAVENSIS is vacant, due to the death of the Most Reverend Henry Charles Camille Lambrecht, the last Bishop of that diocese to have died outside the Roman curia, and the position is now filled by the Reverend Anthony Stillemans, a priest of the diocese of

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Gandavensis. He, born of legitimate, Catholic, and honorable parents in the city of St. Nicholas in the diocese of Gandavensis, having surpassed his fifty-seventh year, having previously received the doctorate in sacred theology after studies in philosophy and literature, was appointed President and Rector of the larger seminary of Gandavensis, and was also included among the Canons for the honors of the Cathedral of Gandavensis, and among the Pro-Synodal Examiners. The CATHEDRAL CHURCH of MONASTERIENSIS is vacant, due to the death of the Most Reverend John Bernard Brinkmann, the last Bishop of that diocese to have died outside the Roman curia, and the position is now filled by the Reverend Hermann Dingelstad, a priest of Monasteriensis. He, born of legitimate, Catholic, and honorable parents in the district, commonly called Bracht, of the diocese of Monasteriensis, having surpassed his fifty-fourth year, having previously received the doctorate in the philosophical faculty, was appointed Professor first at the Augustinian College of Gaesdonchan, and then at the Gymnasium of Vechten, and fruitfully taught Christian doctrine concerning faith and morals, together with ecclesiastical history, to nearly five hundred young men. The CATHEDRAL CHURCH of PASSAVIENSIS is vacant, due to the translation of the Reverend Father Anthony Phoma to the Metropolitan See of Munich-Frisingen, and the position is now filled by the Reverend Michael Rampf, a priest of Munich, by appointment, and with the force of an Apostolic Indult, of the Most Serene Prince Luitpold, Regent of the Kingdom of Bavaria. He, born of legitimate, Catholic, and honorable parents in Munich, having surpassed his sixty-fourth year, having previously received the doctorate in sacred theology, having served as Director of the seminary of priests, which flourishes in Frisingen, and having previously resigned as Canon and as Prefect of the church of Munich, has once again performed the duties of both General Vicar in spiritual matters of that archdiocese, and of Capitular Vicar when the See was vacant, and is included among the Domestic Prelates of His Holiness. FROM THE CONSISTORY ACTS.

[*Latin ed. p. 332*]

332 FROM THE ACTS OF THE CONSISTORY: The Cathedral Church of Vilna is vacant, due to the resignation of the Reverend Father Charles Kriniewicki, which he freely and willingly tendered to His Holiness and which was accepted by the same, with the favor of the Reverend Anthony Andziewiez, a priest of the diocese of Vilna. He was born of legitimate, Catholic, and honorable parents in the parish of Salatensi, Telzy, in the diocese of Vilna, and has surpassed his fiftieth year. He has previously received the degrees of Candidate, Master, and Doctor in sacred theology. He is the chaplain of the military hospital of St. James in Vilna, and the vicar of the parishes of the Holy Apostles Philip and James, Verkoviensis, Turgelensis, and Radorzkovicensis. He has been appointed Professor of

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Catholic religion in the gymnasium of Vilna. He has previously served as an adjunct canon in the Chapter of Mogilev, and has been honored with the dignity of Scholastic.

The Cathedral Church of Lublin is vacant, due to the death of the Most Reverend Casimir Wnorowski, the last bishop of that see who died outside of Rome, with the favor of the Reverend Francis Yaczewski, a priest of the diocese of Podlachiensis. He was born of legitimate, Catholic, and honorable parents in the village now called Gorki Grubaki, in the diocese of Podlachiensis, and has surpassed his fifty-seventh year. He has previously received the degree of Candidate in sacred theology. He served as a prefect in the seminary of Podlachiensis, teaching the clergy the sciences of sacred Scripture, sacred rites, and moral theology. He has been called to Lublin by the Ordinary, who is also the Administrator of Podlachiensis, the rector and professor of the seminary, the defender of marriages, the surrogate judge of that Consistory, and the pro-Synodal examiner. He has been appointed Canon of Lublin, and in that vacant seat, as vicarious of the chapter, and as the general administrator of the diocese.

The Cathedral Church of Płock is vacant, due to the death of the Most Reverend Gasparis Borowski, the last bishop of that see who died outside of Rome, with the favor of the Reverend Michael Nowodworski, a priest of the diocese of Włocławek. He was born in Włocławek of legitimate, Catholic, and honorable parents, and has surpassed his fifty-eighth year. He has obtained the doctorate in sacred theology. He has been appointed vicar of the parish of Caenecensis in the diocese of Kujawy or Kalisz, librarian of the ecclesiastical academy of Warsaw, professor of canon law, and, by competition, has been appointed professor of biblical sciences. He is a canon of the collegiate church of Łowicz, and has served as the censor of books in Warsaw.

[*Latin ed. p. 333*]

FROM THE CONSISTORY ACTS:

A religious argument, counselor professor of the ecclesiastical academy, and member of the academic council, who until now was a Canon of Warsaw, a Judge, and a pro-Synodal examiner, has been appointed.

The CATHEDRAL CHURCH OF CHILAPA in the jurisdiction of Mexico, in North America, is vacant, due to the translation of Reverend Father Bonaventure Portillo, of the Order of the Friars Minor Observant of Saint Francis, to the See of Zacatecas in Mexico, with the favor of Reverend Joseph Raymond Mary Salome Ybarra, a priest of the diocese of Tlascala in Mexico.

He, born of legitimate, Catholic, and honorable parents in the place called Olinalà of the diocese of Tlascala, and having surpassed his thirty-

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sixth year, was joined to the students of the Pontifical College of the Americas in Rome, and then, having been enriched with a doctoral degree in philosophy, sacred theology, and canon law, and having studied under the Congregation of the Council of Trent in this city, he returned to his homeland, and, having until now been a Canon of the Church of Tlascala, with that see vacant, he has performed the duties of a vicarious capital, and has also served as provisional administrator and general vicar of the diocese.

The TITULAR EPISCOPAL CHURCH OF AMATHEN is vacant, under the Metropolitan of Scitopolis, due to the succession of Reverend Father Dominic Taccone-Gallucci to the Sees of Nicotera and Tropea, united to each other, with the favor of Reverend Paschal Corrado, a priest of the archdiocese of Benevento.

He has also been appointed as a coadjutor with future succession to Reverend Father Caietan Rossini, Bishop of Melphicta, Juvenal, and Perlita.

He, born of legitimate, Catholic, and honorable parents in the town of Montenero, in the archdiocese of Benevento, and having surpassed his fifty-fourth year, has performed the duties of confessor, synodal examiner, and procurator of the clergy, and has until now been the ordained curate of the Abbey of Saint Nicholas in the place of his birth.

The TITULAR EPISCOPAL CHURCH OF CARYSTEN is vacant, under the Metropolitan of Chalcedon, due to the assignment of the Church of Saint Alexis of the City to the Most Reverend and Most Reverend Joseph, a priest, Cardinal of the Holy Roman Church, d'Annibale, with the favor of Reverend John Mary Iannoni, a priest of the diocese of Fescennina.

He has also been appointed as a suffragan for pontifical and other pastoral duties in the suburban churches, perpetually and canonically united to each other.

[*Latin ed. p. 334*]

334 FROM THE CONSISTORY ACTS: Concerning the sees of Ostia and Velletri, and their dioceses. The Reverend John Mary Iannoni, born of legitimate, Catholic, and honorable parents in the territory of Campania, in the diocese of Nepes, having surpassed his fifty-seventh year, having obtained a canonry in the collegiate church of Caprarola, was also elected as a theologian canon there. The general vicar for spiritual affairs, having repeatedly and for the present time, relinquished the vicariate of Velletri, and having also performed the duties of a capitular vicar in that see, also renounced the office of Abbot Ordinary of Nullius S. Martini ad montem Ciminum. The titular church of Dionisiada, vacant under the Archbishop of Boston, due to the death of the Most Reverend Thomas Gentili, the last bishop of that see who died outside the Roman curia, was conferred upon the Reverend LucÉmci Felicis Zdanowicz, a priest of the diocese of Vilna. Who, born of

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legitimate, Catholic, and noble parents in the parish of Datnoviensis, in the province and district of Caunus, in the diocese of Vilna, having surpassed his seventy-fifth year, having previously been made a Master and Candidate in sacred theology, was a canon of the Chapter of Vilna, from which he was appointed to the Roman Catholic College of Petrograd, and until now held the dignity of Prelate and Prefect there, and was the apostolic administrator of that diocese of Vilna. His Holiness added other churches through letters in *forma*. Recently, the Brief provided for the resignation of Louis Piavi, Archbishop of Siun. John Walsh, Bishop of London, was appointed Archbishop of Toronto. Alexander Grossi, Bishop of Oesen, was appointed Metropolitan Archbishop of Nicopolis. James Cleary, Bishop of that Church, was appointed to the newly established Metropolitan see of Kingston. Thomas Grace was transferred to the titular Archbishopric of Amennitens. Henry Collaghan, Bishop of Hagulstades and Newcastle, was adorned with the titular Archbishopric of Nicosia. Martin Marty, Bishop of Tiberias, was transferred to the see of Siouscormense. The Patriarch of Jerusalem.

[*Latin ed. p. 335*]

FROM THE CONSISTORY ACTS 335, the Bishop was appointed to the Sees of Cisamus and Hexham, and of New Castle. He appointed Henry Verius, the Bishop of Limyra, as a perpetual Coadjutor to the Apostolic Vicar of New Guinea, transferring him from the Apostolic Vicariate of New Brittany. He appointed John Coffey to the Sees of Henie and Gadamen. He elevated John Keys O'Dogherty to the See of Denie. He provided for the newly erected Church of St. Claude with a rectory from the Chapel of St. Peter-on-the-Wall. He assigned the Cathedral of Duluth, which he had recently erected, to James Mae Golrich. He appointed John Stanley to the See of Novae, the Metropolitan See. He appointed Joseph Cotter to the newly erected See of Vinon. For the person of Augustine Van de Vyver, he provided for the Church of Richmond. He granted the title of Gambysopolis to William Wülfing, the Apostolic Vicar for Surinam. He restored the Church of Abolerita to Maglorium Desideratum Barthet, the Apostolic Vicar and Prefect of Senegal. Today, the Apostolic Vicar in Northern Tanganyika chose a perpetual Coadjutor with the title of Amoriense, namely Maximinus Velasco. He granted the title of Idiensis to the perpetual Coadjutor with the title of Arcadiopolis, namely William Gordon. He appointed Andreas Albert Blais as the Bishop of Germanicopolis and perpetual Coadjutor to the Bishop of St. Germain. He granted the Church of Zaraitense to Edmund Dardel, the Apostolic Vicar for the Seychelles Islands. He appointed Roch Tornatore, the Apostolic Vicar in Eastern Burma, to the Church of Castabalen. He resigned the Bishopric of Tevestinum, John Hirth, the Apostolic Vicar of Victoria Nyanzensis. He chose Vincent Brancia as the perpetual Coadjutor to the Church of Uxentini, with the title

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of Amathusiae. He assigned the titular Episcopal Church of Amathusiae, vacant under the Archbishop of Salaminio, due to the death of the late Bishop, the Most Reverend Anthony Galecki, the last Bishop to die outside the Roman Curia, in favor of the Reverend Vincent Brancia, a priest of Nicotera; who was also appointed as Coadjutor with future succession, the Reverend Father January Mariae Maselli, formerly of the Order of the Minims, Bishop Thomas Wilhinson.

[*Latin ed. p. 336*]

336 FROM THE CONSISTORY ACTS of Ugentine. The Reverend Vincent Brancia, born of legitimate, Catholic, and honorable parents in Nicotera, having surpassed his seventy-first year, having previously received the doctoral degree in sacred theology, professor emeritus of Latin and Italian literature, which he taught in the paternal seminary, formerly Canon, and until now Archpriest of the Cathedral of Nicotera, having held the offices of General Pro-Vicar for Spiritual Affairs, Judge of the Synod for that diocese, and Synodical Examiner for Nicotera and Tropea. To the titular church of Uranopoli, Thomas Mac Redmond was appointed, perpetual Coadjutor of the Bishop of Laon. The title of Gadarense was assigned to Joseph Schirò, of the Greek Rite, for the ordination of Italo-Greeks of Calabria. Aloysius Coupet was appointed Apostolic Vicar of Nova Britannia, with the title of Lerio. To Lawrence Guillon, Apostolic Vicar of Manchuria, the church of Eumenes was granted. The office of Auxiliary was conferred upon Cardinal Alexander Carmel Brincat, Archbishop of Carthage, with the title of Hadrumetum. Stephen Potrón, of the Order of the Friars Minor of St. Francis, was appointed Bishop of Hiericuntinum. Having completed these appointments, Our Holy Lord opened His mouth in the manner of the ancients to the Most Reverend and Right Reverend Lords Cardinals Richard, Foulon, and Schönborn, so that they might exercise their authority in Consistories, Congregations, and other Cardinalatial functions, wherever they may be. And after a pressing, more pressing, and most pressing request from the consistorial advocates, and after granting them the precious ring for the Patriarchal Church of Jerusalem of the Latin Rite, and for the Metropolitan Sees of Urbino, Seville, Valladolid, Monaco-Praising, and Taranto, He conceded and assigned to the same Most Reverend and Right Reverend Cardinals the following titular churches: To the Most Reverend and Right Reverend Lord Richard, the church of St. Mary in Via. To the Most Reverend and Right Reverend Lord Foulon, the church of St. Eusebius. To the Most Reverend and Right Reverend Lord Schönborn, the church of Sts. John and Paul.

[*Latin ed. p. 337*]

337 Letters from His Holiness Pope Leo XIII to Cardinal Eume, the Vicar of Rome, concerning the spiritual retreat to be undertaken by all

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the clergy of Rome, without exception. LEO XIII, FOR PERPETUAL REMEMBRANCE. My Lord Cardinal. Cardinal Eume. Among the many concerns that, out of duty to our apostolic ministry, We have always dedicated to the preservation and increase of the Catholic religion in Italy, the most important is that which concerns the Clergy, upon whom, to a great extent, depend the interests of the faith and the salvation of souls. Therefore, on every occasion, We have earnestly urged that the Clergy be formed not only in solid and true knowledge, but especially in priestly virtues and in a truly ecclesiastical spirit, which is the very spirit of the highest and eternal Priest, JESUS CHRIST. — But the necessity of having a Clergy so formed is much greater and more keenly felt in the city of Rome. Here, in the capital of the Catholic world, in the center of our most holy religion, where Catholics come from all parts of the earth to find comfort for their faith, here, more than elsewhere, it is necessary that the life, customs, and works of those who are called the light of the world and the salt of the earth, shine with a brighter and more radiant light, so that all may draw virtue from them.

[*Latin ed. p. 338*]

LETTER 338: May the examples from this land shine with a clearer and more brilliant light, so that all may draw edification and encouragement to do good. — Therefore, just as we have recently done with all the Bishops of Italy, so too, and even more so, we now feel the need to call, Most Reverend Cardinal, your utmost attention to this most important matter. — The particular conditions of Rome, the greater number of clerics who come here from every country, demand greater care and diligence, so that the discipline of the clergy may not suffer for these reasons, nor lose its effectiveness. — It is fitting here to render honor to so many members of the clergy, who, being an example of virtue and full of zeal, are devoted to the works of the sacred ministry and Christian charity, in their devotion and attachment to the Holy See and the Vicar of Jesus Christ, in their obedience and respect towards their Superiors, and in the spirit of unity and concord, they believe that the surest guarantee of their righteous actions, the source of the greatest blessings from heaven, and the effectiveness of their efforts, are found. Through them, the glorious traditions of the Roman clergy are continued, which have left so many and such brilliant examples for posterity to imitate; and some of whom have even been deemed worthy of the honors of the Saints. — But it is known that the enemies of the Christian name are aroused in all things, and with various devices, wage war against the Church.

[*Latin ed. p. 339*]

339. Rome must always, and especially, be regarded, and against it, its forces must be brought to bear. Thus, even here, a dark work has been

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begun against the clergy, with the nefarious intention of discrediting them, dividing them, alienating them from legitimate prelates, and making them rebellious to their authority. For this purpose, every means is employed. But what is most deplorable and lamentable, we teach, is that even among the ecclesiastical men themselves, one can be found who, forgetting his duties and the sanctity of his character, dares to devote his efforts to carrying out and executing such wicked schemes. For these reasons, the present danger must be addressed without delay and with all our strength. And we believe it is of the utmost importance that, in the education of the younger clergy, the most diligent and constant care be taken, that the wisest judgment, and all very prudent precautions, be employed in admitting those who come here from other dioceses, and that neither group be left too much to their own discretion; but that, both with regard to the conduct of their lives, and also with regard to the exercise of their sacred duties and offices, they should know that they are always under the watchful eye of their prelates, and that they should constantly feel the salutary restraint of wise and prudent discipline. But above all, let all be imbued with the spirit of sanctity, self-denial, sacrifice, and zeal, which the sacred Scriptures demand.

[*Latin ed. p. 340*]

LETTER 340. Firm and wise discipline. — It is most fitting that those who are to be true ministers of Christ should be animated by that spirit of sanctity, humility, self-sacrifice, and zeal which is proper to their character. To this end, it is most opportune to call them together for spiritual exercises; for these exercises, if diligently practiced, will contribute to the reform of life, to perseverance in good, and to the renewal of the spirit, amidst the dangers and the many causes of distraction which the world presents, and they will prove to be of wondrous efficacy.

We know that here, among ecclesiastical men, the practice of spiritual retreats already exists. But We desire something more special, namely, that the entire Roman clergy, without exception, should devote some days next year to prayer and contemplation.

To you, Most Eminent Cardinal, We entrust the care of arranging all that is necessary for the execution of Our will; and We are certain that all ecclesiastical men will readily respond to Our invitation; and that, by following Our advice, they will draw from this singular grace that greatest and most lasting spiritual benefit which We so ardently desire for them.

For this purpose, We implore from on high the most abundant blessings upon them, and upon you, Most Eminent Cardinal, and upon the entire clergy.

[*Latin ed. p. 341*]

Editions of the heavens: and to you, most holy Roman Apostolic Cardi-

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nal, and to the entire clergy and people of Rome, we impart from the heart the apostolic blessing. Given at the Vatican, this 18th day of December, 1889.

LETTERS

POPE LEO XIII.

FROM THE HOLY CONGREGATION OF THE COUNCIL, OF THE SACRED CONCILIARY PROCESSIONS.

July 6, 1889. Session 25, chapter 22, concerning Reforms.

In the town of Cassano all'Jonio, in the Diocese, commonly called Morano Calabro, there exist three parish and titular churches dedicated to God: one in honor of Saint Peter the Apostle, another of Saint Nicholas, and a third of Saint Mary Magdalene. Among the clergy of these churches, from ancient times, there have often arisen disagreements and disputes, especially concerning rights and privileges in the performance of processions and other sacred functions. Therefore, in the year 1666, a certain agreement was initiated between the parties, by judgment of the Holy Office, which, however, does not seem to have put an end to the controversies. Indeed, in the year 1734, before the Holy Office, the matter was again debated concerning precedence and other related questions between the church of Saint Peter and the clergy of Saint Mary Magdalene. The cause was definitively decided on June 5th of that year; and among the doubts then proposed, the third was formulated as follows: "Whether, if it should be determined that one or the other church has precedence, it is permissible for the clergy of Saint Mary Magdalene to withdraw from the agreement established in the year 1666, so that processions may be held separately in such a case."

SUMMARY OF THE FACTS.

[*Latin ed. p. 342*]

342 CASSANO ALL'JONIO. To which it seemed fitting to reply: "No, and to the Most Reverend Secretary, in accordance with the sentiments [of the parties], that, in order to completely extinguish the controversies that have existed from ancient times between these clergy, if any agreement could be reached, it should be stipulated that, while maintaining the preeminence of the Church of St. Peter, processions should be held separately, and that the Most Reverend should be petitioned to grant his Apostolic approval." As is read in the document of that time, the Most Eminent and Reverend Fathers [E.E.P.P.] reached this decision, based both on the opinion expressed by a certain judge to whom the parties had submitted the matter, and on the vote of the Bishop of Cassano all'Jonio, who expressed

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his sentiments in these words: "I would desire that, in order to completely settle the ecclesiastical and civil disputes and controversies, and to prevent any future cause for scandal, the clergy of the three aforementioned churches should be completely separated, and that each should perform all sacred functions and processions within its own church and parish." However, since the parties could not agree on holding separate processions, the case was again brought before the court, and the doubts were re-raised on August 21, 1734. The Most Eminent and Reverend Fathers [E.E.P.P.] responded: "In the decisions and further." This resolution was confirmed by the perpetual silence imposed on the parties by the Apostolic Brief issued by Benedict XIV on April 6, 1743, as well as by the decrees of December 29, 1764, and September 1, 1781, of King Ferdinand IV, as the clergy of the Church of St. Mary Magdalene assert. After these events, matters seem to have proceeded peacefully until the year 1872, when the clergy of St. Mary Magdalene petitioned the Sacred Congregation of Rites, alleging that, on the occasion of the procession of the Blessed Virgin Dolorous, the clergy of St. Nicholas had entered the territory of their parish. Furthermore, after hearing the Bishop, the Sacred Rites Congregation considered it appropriate to respond: "It was not permissible, nor is it permissible, for the rector, canons, and priests of the aforementioned Church of St. Mary Magdalene to oppose the rector, canons, and priests of the aforementioned Church of St. Nicholas."

[*Latin ed. p. 343*]

CASSANEN. 343. Saint Nicholas. When these individuals, with the consent of the Bishop, enter the boundaries of the parish of Saint Nicholas during processions; and he commanded the clergy, that in the future they should entirely abstain from making any opposition. This caused no small distress to the clergy of Saint Mary Magdalene, who, therefore, in the year 1884, petitioned the Sacred Congregation of Rites, complaining that they had been unjustly condemned based solely on information from the Bishop, and arguing that they were justified in preventing the parish priest and clergy of Saint Nicholas from leaving their territory and entering the boundaries of another parish, due to the special decrees of the Sacred Congregation of the Council previously mentioned. Therefore, they requested that the entire matter be referred by that Sacred Congregation to the Sacred Congregation of the Council, which had already been preempted. And this was done. In their petition, in addition to the matter of the boundaries to be observed during processions within the parish, the clergy of Saint Mary also made complaints against the parish priest and clergy of Saint Nicholas. They lamented that the clergy of Saint Nicholas had invaded the boundaries and jurisdiction of the parish of Saint Mary, not only during processions, but also in the blessing of homes, in the administration of the sacraments, and at funerals. Regarding

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all of this, having been requested by the Sacred Congregation of the Council, the Bishop, after receiving the documents, and along with a certain allegation transmitted by the clergy of Saint Nicholas, responded promptly. Furthermore, regarding matters other than some concerning the right to hold processions, which will be discussed later, concerning the rest of what the clergy of Saint Mary Magdalene complain about, these are either false or exaggerated. Indeed, regarding the administration of the sacraments and funerals, the clergy of Saint Nicholas state that they have never violated the rights of the parish priest of Saint Mary Magdalene, but have sometimes only been called by the relatives of the deceased to come to the homes of the deceased to pray, out of custom and piety. Regarding the blessings of homes within the parish of Saint Mary, which are performed on Holy Saturday, the clergy of Saint Nicholas note that they did so at the request of the pastor of that parish and according to the custom there, whereby the homes of prominent citizens are blessed by each of the three parishes. Furthermore, the clergy of Saint Mary Magdalene presented evidence...

[*Latin ed. p. 344*]

344. GASSA.NEN. does not adduce anything regarding these headings of accusations. Therefore, the entire question seems to be reduced to this single point: whether it is permissible for the clergy of St. Nicholas of the Bishop to enter the parish boundaries of St. Mary Magdalene. A Synopsis of the Dispute. IURACLERIS. MARIAE. However, for the sake of the clergy of this St. Mary, it could first be observed that the right to hold processions is territorial or jurisdictional, as noted by Cardinal De Luca in *De praeem. disc.* XLII, D, and by Pignatellus who states in Volume 6, Constitutiones, 65: "However, it must be held that it is not permissible unless by privilege. I prove this both from the common law and from the decrees of the Holy Councils, of the Bishops and of the Rites, by which it is forbidden for any religious orders and confraternities to hold processions within the boundaries of another parish without the permission of the parish priest. Indeed, from the common law, because holding processions is an act of jurisdiction, as Riccius asserts on page 1, decision 90, number 2. But jurisdiction cannot be exercised in a foreign territory, and therefore processions cannot be held, as rightly concludes P. Donatus, Tamburini, Zerola, etc." And although the Bishop has jurisdiction over the entire Diocese and it pertains to him to order and regulate processions, as has often been defined by the Sacred Congregation, the clergy of St. Mary contend that this must be understood with some limitation. For just as the Bishop cannot proceed without caution, and for a just cause, and in a manner, so to speak, of exception, in diminishing the rights of the parish priest in other matters, so it seems that the same should be said regarding processions. Furthermore, it is commonly held that in order for the Bishop to grant permission to

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enter another parish in processions, the advice of the Chapter is required; Ferraris, in the article "processio," states: "However, the advice, and not the consent, of the Chapter is required: S. R. C. in Comen. 7 Feb. 1632. Thus, the Bishop alone, without the advice of the Chapter, can announce and..."

[*Latin ed. p. 345*]

"The matter, as the authors report, etc., was decided by the same Holy See, so that it could not possibly be altered." However, in the aforementioned case, the permission granted to enter another parish appears to have been given by the Bishop not as an exception, but almost perpetually; nor was the advice of the Chapter sought in granting this favor. Moreover, if the Bishop's permission were granted, it would seem to encroach somewhat upon the agreement of the year 1666, which was confirmed by the decrees of the Holy See in the year 1734, and strengthened by the authority of Benedict XIV and Ferdinand IV. Indeed, although, through that agreement and subsequent decrees, it is expressly and properly stipulated that processions should be carried out separately by each cleric, it also seems implicitly prescribed that supplications should be confined within the boundaries of each cleric's own parish: this is what the Bishop requested, and this is what the very purpose of the arrangement demanded, in order that controversies and disputes might be avoided in the future. Therefore, although the common law did not entirely or peremptorily favor the intention of the clerics of St. Mary, and although the Bishop generally had the power to permit the entry of supplications from one parish into another, nevertheless, considering the particular law in force in Morano Calabro, it would seem that this power was lacking in that particular province. Nor does it seem that there is any reason why the established custom in those places should be altered today in favor of the clerics of St. Nicholas. On the contrary, the same circumstances that led to the establishment of that custom suggest that it should be maintained. The agreement of the year 1666 was established, and confirmed by the Holy See, in order to avoid dissensions and scandals. Indeed, today, the same reason would seem to persist. Furthermore, the resolution of the Sacred Congregation of Rites in the year 1872 cannot seem validly opposed. For, the clerics of St. Mary Magdalene maintain that this decree was issued solely on the information provided by the Bishop. Moreover, it is certainly true that the Holy See was unaware of the facts related above, namely, the decrees of the Holy See, when that resolution was issued. Indeed, not a word or even a hint of these matters is found in the letters of the Ordinary of that time.

[*Latin ed. p. 346*]

346. CASSANEN. Finally, what the clergy of St. Nicholas asserts, namely that they have, on several occasions, even after the judgment of the Most Holy Office, transgressed the boundaries of the parishes during proces-

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sions, has no validity. For a single or even two actions do not establish a precedent. See De Luca, *De Parochis*, discourse 9, paragraph 4; discourse 40, paragraph 11; Petitius, *Discipline Ecclesiastica*, discourse 17, number 53. IURACLERIS. NICOLAI. On the contrary, the clergy of St. Nicholas insists that the response of the Sacred Rites Congregation in the year 1872, which they maintain was entirely in accordance with common law, must be upheld. Indeed, the Sacred Rites Congregation declared in the Trullan Council of December 17, 1602, in Elboren of January 14, 1617, and of March 28, 1628, and in Squillacen of May 9, 1693, apud Ferraris, that the right to announce, direct, and regulate public processions pertains exclusively to the Bishop. And the jurisdiction of the parish priest cannot restrict the power of the Bishops in this matter. Hear, for example, Cardinal De Luca, *Missae Ecclesiasticae*, discourse 15, paragraph 7. "Therefore, there is a great difference between the right of a simple parish priest and that of the Ordinary or Diocesan, because the right of the parish priest is only territorial, whereas that of the Diocesan is also jurisdictional; and also because the Diocesan, as the first parish priest, or as the parish priest of parish priests, and also as a judge and superior, recognizing that the opposition of other parish priests and secular clergy is unreasonable and improper, can, as it were, supplement the consent that has been improperly denied, so that it is carried out with the consent and license of the lord of the territory." Furthermore, it is not absolutely necessary that the Bishop proceed in this matter with the advice or consent of the chapter. Indeed, while this caution is found in some, especially ancient, decrees of the Sacred Congregation, the contrary is admitted in others, and especially in more recent ones. It suffices to cite Urbevetana of June 17, 1606, Elboren of January 14, 1617, apud the Sacred Rites Congregation, Därmen of September 1, 1858, apud the Sacred Congregation of Councils, and others. The most just reason for this difference is that the obligation of the Bishops to consult the chapter, according to the well-known title 10 of book 3 of the Decretals, is not so absolute that it must always and everywhere be followed. Indeed, in this...

[*Latin ed. p. 347*]

CASSANO. The learned Doctors teach, and the laws and decrees of the tribunals entirely confirm, that only the custom of the places must be considered. Reiffenstuel, in *De iis quae fiunt a praelatis*, nos. 8, 25, and 26. Indeed, in the case we are discussing, and concerning the Cassano diocese, the Bishop notes: there is no precedent, in times past, of a chapter ever having been asked regarding the manner, the routes, and the times for processions, either within the city or throughout the diocese. And in truth, while it might easily be asked of the chapter concerning processions held within the city, it would almost be impossible to ask regarding those held in the various towns of the diocese, each of which holds processions five or six times a year. Furthermore, it appears that, according to current customs

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and the observance of boundaries, the discipline is less strict and precise than in ancient times. Thus, for example, formerly, the solemn passage of a funeral procession through another parish, with the cross held high, was scarcely tolerated; whereas, on the contrary, today it is generally permitted and without controversy. Regarding the resolution of the Holy Office of the year 1734, it should be noted, in the response appended, that only this should be read: that "the processions must be held separately," and not that they must be carried out by each cleric in his own church and parish, as was written in the Ordinary's decree. Moreover, from the fact that it was stipulated that supplications must be made separately by each cleric, it does not follow, nor can it legitimately be inferred, that it was also ordered that they be held within the territory of each parish, with absolute observance of boundaries; and even less can it be inferred that by this decree the power of the Bishop was removed, a power which he has by common law, to appoint sacred supplications and to order them at his discretion. Indeed, in the matter discussed in the year 1734, only one thing was properly addressed, namely, the precedence between the churches of Saint Peter and Saint Mary Magdalene, and in no way was the right to cross the boundaries of one or the other parish in carrying out processions placed in jeopardy. The reason why it was ordered that the processions be held separately was because, each church...

[*Latin ed. p. 348*]

348 CASSANEN. He attributed preeminence to himself. However, these matters appear entirely distinct from the present question. Therefore, as De Luca, Decreta, no. 61, rightly concludes, "it cannot be said that a decision has been reached... a decision must be interpreted in light of the facts presented to wise men, as appears in the text: and that which has not been disputed, nor has been shown to be incorrect, cannot be considered a decision, presuming a widespread opinion based on the results of the proceedings." This is consistent with De praeem. disc. 4, nos. 4 and 5. And so, the judgment of the Sacred Congregation has always been understood in such a way that, indeed, processions should be held separately, but without any regard for the crossing of the boundaries of the parish; the clergy of St. Nicholas can attest to this from the ancient customs of that town. For, as the Bishop himself recalls, from the most remote times, and almost by necessity, due to the irregular form of the boundary, it has frequently happened that the processions of St. Nicholas enter the territory of St. Mary Magdalene. This occurred in the procession of the Purification of the Blessed Virgin Mary, already in the year 1777, as well as in the processions of Palm Sunday, Rogation, and the Blessed Virgin Mary greeted by the angel, in which the clergy of St. Nicholas approached the chapel of the Annunciation, which belongs to them, although located within the territory of the parish of St. Mary Magdalene. And this has always been the case, peacefully and with-

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out dispute. Although, in this age, it has happened more frequently that certain more solemn processions are led by the clergy of St. Nicholas, and in these, the territory of St. Mary Magdalene is traversed, yet the clergy of St. Nicholas maintains that this has always been the case, both due to the desire of the people, and due to the will of the Bishop, and also due to necessity. Indeed, the Bishop states: "It was not the first time that a procession took place in the year 1873, with my consent; for in the year 1872 as well, with me present, a procession was peacefully held around the area, now being disputed." Similarly, the same procession took place last April. There is, in fact, a certain necessity in touching the extreme territory of St. Magdalene so that the procession of Palm Sunday can take place with some decency and decorum by the Chapter of St. Nicholas.

[*Latin ed. p. 349*]

CASSANEN. 349 Therefore, if in every case a parish priest should emulate his brother priest and the nearest clergyman to such an extent that he acts as an adversary, as is common today in states hostile to the Church, it does not seem that the presumption of that parish priest can be tolerated without great reprehension, who, not only resists his brother, but also opposes the passage of supplications permitted by his Ordinary Bishop for a just and necessary cause. With all of this stated, the following question was proposed: Can the parish priest and clergy of St. Nicholas, with the permission of the Bishop, enter into supplications within the parish of St. Mary Magdalene in this case? RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on July 6, 1889, decided to respond: Affirmative, and furthermore. FROM WHICH WE GATHER: I. That the right to indicate, direct, and order public processions belongs to the Bishops; nor does the jurisdiction of the parish priests have the power to limit the power of the Bishops in this matter throughout the entire Diocese. II. That the right of a simple parish priest and that of the Ordinary differ greatly; for the right of the parish priest is strictly territorial and pertains to the parish; whereas the right of the Bishop is jurisdictional and pertains to the entire Diocese; and thus the Bishop has the power, as a parish priest among parish priests, or as a superior and judge, to recognize when the opposition of a parish priest is unreasonable or indiscreet. III. Although the Bishops are obligated by title 10 of book 3 of the Decretals to consult with the chapter regarding the permission of processions; nevertheless, this obligation is not so absolute that it must always and everywhere be followed; as is also evident from the most recent resolutions of the Sacred Congregation of Rites. IV. In this matter, apart from unusual jurisprudence, there is no case in which the chapter consulted has, after a time, given

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advice or consent regarding the processions to be held.

[*Latin ed. p. 350*]

350. BRIXEN. OF THE DIOCESAN SYNOD. July 6, 1889. By summary petition. SUMMARY OF FACTS. The Bishop of Brixen sent these letters to the Sacred Congregation for the Council: "Since, due to the reasons explained in the report I have made regarding the state of the diocese, on the occasion of the visit to the Holy Threshold, it is difficult, indeed impossible, to convene a diocesan synod according to the strictness of the canons, I earnestly request that the Most Eminent Lords grant such a form as is suited to our circumstances, without, however, departing too far from the law of the Church. This my petition is based on the Brief *ad Episcopos Austriacos* of Pope Pius IX, dated November 5, 1855, in which the Pontiff benignly promised that a more convenient method of holding a synod would be granted to them, as was granted to the Bishop of Liège, by virtue of a rescript dated May 4, 1851, or according to another method presented in Synod Dioc. I. 4, c. 2, n. 5 by Pope Benedict XIV. "It is not without reason to point out that in our diocese it does not seem suitable to hold the synod jointly with the spiritual exercises, although these are customarily held annually, at almost the same time, in different places of the diocese for the priests. "It seems to me most convenient to hold the synod in the episcopal city itself, but in such a way that not all those who are required to attend by law must be summoned, because so many priests cannot abandon their flocks for so many days. In my opinion, it would be sufficient to invite only the parish priests, and also the vicars, who are not parish priests of larger populations, in addition to the capitulars and other priests of higher rank, but that all those invited would be compelled to attend, which is not possible. Perhaps it would be advisable that those who, although invited, cannot attend, would choose representatives in their place."

[*Latin ed. p. 351*]

BRIXEN. 351 persons to be present. However, let not clerics of a lower order, for example, auxiliary priests or non-parochial beneficed priests, be excluded from the synod; these also could delegate their roles to certain representatives, if the Most Eminent ones deem it fitting. "But a particular difficulty arises concerning the Vicariate of Vorarlberg. As clearly explained in the preceding section, the district of Vorarlberg, according to the intentions of the Most Reverend Pope Pius VII, who considered it a future diocese, is not properly a part of the diocese, but rather a special territory, and in a certain sense, distinct from the Diocese of Brixen. Nevertheless, in practice, this distinction scarcely becomes apparent, since all laws and ordinances issued by the Ordinary of Brixen are entirely applicable also to said Vicariate, so that all manner of uniformity prevails both here and there. "In order that this desirable uniformity may also be maintained in

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the future, it is most desirable that only one synod be held for each district. "But one might be swayed to completely merge the district of Vorarlberg with the Brixen diocese, since, according to the intentions of Pius VII, it should be considered not as a part of the diocese, but rather as a special territory. "Therefore, I ask: - 1. that the Congregation of the Holy Council approve the method indicated above for holding the diocesan synod, or deign to suggest another method; 2. that, unless the provisional situation in Vorarlberg – which would be most desirable – is somehow changed, the priests of Vorarlberg be declared obligated to attend the diocesan synod of Brixen, notwithstanding the fact that the Most Reverend Pius VII had in mind the establishment of two dioceses, so that this precious and desirable unity may be maintained. > Synopsis of Discussion. Regarding each point which the Bishop requests to define or grant, a few notes have been added; and first, concerning the place and time for convening the synod, in Viterbo, on September 14, 1782.

[*Latin ed. p. 352*]

352 BRIXINEN. § 2 These regulations were found, namely: "The Bishop can convene a Synod not only in the city, but in any place within the Diocese; however, it is desirable, if no impediment exists, that this should always be held in the cathedral church." Therefore, if the Bishop wishes to convene a Synod separately from spiritual exercises, he is permitted to do so; but if he orders that it be held in the cathedral, he has the power to do so, not only broadly, but justly. Furthermore, the matter of whether those who should avoid attending the Synod, or whether they should attend, has also been examined. Indeed, the Council of Trent, chapter 2, session 24, teaches: "However, those who are in charge of parishes or other secular churches, even those annexed, must attend the Synod, whoever they may be." Therefore, it has been established that, besides the canons, all pastors must attend the Synod; with regard to the rest of the clergy, it is commonly taught that if the Synod is to deal with a matter concerning the entire clergy, namely, the reform of morals and the promulgation of provincial decrees, then all must be obliged to attend; otherwise, they are not obliged, Vulturarien. Iur., January 19, 1828. Regarding the fact that not all who otherwise should attend the Synod should be compelled to attend, lest due services to the churches be withdrawn, this seems entirely just and necessary. Indeed, the matter is so clear that it truly does not require discussion; however, if the rights by which this is supported are sought, one may consult the cited Vulturarien. Iur., November 19, 1727, apud Zamboni, vol. 4, Conclus. v. Synodus dioeces., where it is concluded in these terms: "All of the same clergy are obliged to attend, provided that due services to the churches are not withdrawn." Indeed, Benedict XIV, De syn., book 3, chapter 12, number 3, teaches: "If the pastor cannot lawfully and piously consult with another for the salvation of the flock, he may lawfully excuse himself from the

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Synod," and "not only should they not be blamed, but rather they should be highly commended (the pastors), if only for the reason that they do not attend the Synod, because they have no other priest to substitute for them in the care of souls." Therefore, the Bishop not only should not, but must not...

[*Latin ed. p. 353*]

BRIXINEN. 353 He can compel all, even those who are ostensibly bound to the Synod, to attend the meeting. He will be able to see and judge thoroughly, lest anyone conceal negligence and indifference under the pretext of the good of souls. The only difficulty, if there is one, concerning the appointment and admission of proxies for the absent, arises. Indeed, Benedict XIV, in book 3, chapter 12, paragraph 4, mentions the opinion of some who taught "that a legitimately impeded person can appoint a proxy, not only to excuse his absence, but also to participate in the Synod in his name;" but he disapproves and rejects this opinion for the following reasons: - there, in chapter 7 - "In a diocesan Synod, only the Bishop is the judge and legislator: he makes and promulgates decrees in his own name, and although he seeks the counsel of those present, he is not obliged to follow it; therefore, the admission of proxies cannot contribute anything at all to the benefit of the Synod. Furthermore, either a proxy is chosen who would not otherwise be present at the Synod, and this person can be rejected as an outsider; or a proxy is chosen who is already entitled to participate in the Synod, and this person certainly cannot offer two opinions, one of his own and another in the name of the absent, to the Bishop; and therefore, it is useless and superfluous to represent the person of the absent in the Synod; therefore, we believe that no admission should be granted to proxies to the diocesan Synod, unless it is opened to them by the same custom that has long existed in the Diocese." However, with due reverence for so great a Pontiff, I say that I do not believe that arguments against the admission of proxies for the absent are conclusive. And first of all, it is evident that the question applies only to those who have the right to participate: for those who cannot participate themselves, a fortiori, they cannot be present through another. Also, it is clear that only those who are able to be present at the Synod can be chosen as proxies. Given this, the admission of proxies for the absent rests primarily on a principle of equity. Indeed, although the Bishop alone is the true judge in the Synod, nevertheless, he does not judge there except with the counsel of his brothers. Acts, Volume XXII, page 258, paragraph 23.

[*Latin ed. p. 354*]

354. BRIXEN. For this very reason, the Synod is convened, so that the Bishop may, through the experience, vote, and prayer of many, better learn what laws it is fitting to enact, and with what diligence and effectiveness

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these laws should be foreseen and observed. However, even the vote of an absent person does not seem to be devoid of effect and utility in this regard. Furthermore, as Benedict XIV notes, a procurator cannot "present one opinion in his own name, and another in the name of the absent person." This may be true if the procurator has a general mandate; but, on the contrary, it can be readily and frequently verified that the procurator has received a special mandate regarding a particular matter, and therefore, if he adds the vote of the absent person to his own, he certainly adds strength to it; but if he contradicts the vote of the person who mandated him, it will alert the Bishop that there is not a unanimous opinion among his clergy on that matter, which knowledge is not only superfluous to him, but can provide him with great benefit. Moreover, Benedict XIV himself testifies in I. c. I. 1 c. 2 n. 5, that the Sacred Congregation of the Holy Office recommended to the Bishop of Carrara the constitution concerning procurators. Indeed, since he could not assemble the entire clergy, the Sacred Congregation proposed to him that he should order the clergy of each island to convene, "delegating their authority to one or more procurators," who would report on the state of their churches, and who would inform the Bishop, not only in their own name, but also in the name of the absent, "what is happening in each part of the diocese." Truly, the Bishop of Brixen asks for nothing more, since he himself is invited to participate in a similar undertaking by Benedict XIV. Finally, if, as Benedict XIV teaches, it is possible to admit procurators to the Synod according to custom, there does not seem to be any serious obstacle to introducing this practice with the permission of the Holy See. Lastly, with regard to the Vicariate of Vorarlberg, there does not seem to be any obstacle to the priests of that region convening in a single Synod with the rest of the clergy of the Brixen diocese, and being bound by the same laws. Indeed, in the Synods of Matheran and Acerenza, on March 24, 1736, as stated by Zamboni, I. cit., it was decreed: "Any Bishop who has two dioceses which are equally and principally united, can..."

[*Latin ed. p. 355*]

BRIXINEN. 355. A synod should be held in either one or the other [of the two churches], and both clergy should be summoned to it, wherever the bishop desires. And in Viterbo, or Tuscania, on September 14, 1782: "When two cathedral churches are governed by the same bishop, the bishop can, after considering the severity of the law, hold a synod in the church that he prefers, to which all the clergy of both dioceses are obliged to attend, and the constitutions issued must be observed inviolably; although, in order to avoid conflicts between the two churches and to promote concord, it is highly advisable that the synod be held only in one church, and not in the other." Furthermore, the district of Vorarlberg has not been established as a separate diocese, but only designated as such; for it is said that Pius VII only intended to establish the diocese of Vorarlberg. Therefore, the bishop will

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be able to gather the priests of that place together with the other clergy of his diocese, and to subject them to the same laws. With these things noted, the question was asked as to what should be answered in the prayers. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter on July 6, 1889, decided to respond: For the sake of propriety, excluding procurators. (1) MARSORUM ELECTIONIS CANONICORUM. On July 6, 1889. Through summary petitions. The Bishop of Marsorum reported to the S. C. C. that he wished to restore religious service, especially on holidays, in the collegiate churches, which had been suppressed by an unfortunate civil law, and that he wished to appoint honorary canons; but without the consent or vote of the chapters, among which, others... COMPENDIUM FACTI. (1) Recole Vol. XXI, 726 Baionen. Diocesan synods; for this purpose, permission was granted to summon not all the parish priests at the same time.

[*Latin ed. p. 356*]

356 In MARSORUM, where the religious are now deceased, only two or three titular canons remain. And I would explain this with the following reasoning: the surviving canons would find it very difficult to agree to a nomination that would restore the choral offices. For now, they consider themselves free from all obligations of the choir, since one or the other, of the few who remain, is excused from the choir either by infirmity or by the care of souls. Regarding this matter, the Ordinary requests the faculty to nominate honorary canons, without the counsel of the Chapter, imposing upon those nominated the obligation to attend the choir, at least on feast days.

A Synopsis Regarding the Nomination of Canons: It is certain that, unless a particular custom exists, this right pertains both to the Chapter and to the Bishop. Thus it was decided by the Sacred Congregation of Rites in the case of Fulginatensi on February 26, 1629, and again in Fulginatensi on August 6, 1815, and in the case of July 6, 1867, as reported in the Acts of the Holy See, volume III, page 118, in which, regarding a doubtful matter, "whether the Archbishop can, by his own authority, nominate canons honorary, and also assign this honor to certain offices, such as doctors of the Seminary, pastors of parishes, etc., or rather, whether he ought to do this with the consent or counsel of the Chapter." The Sacred Congregation of Rites responded: "Negatively to the first part, affirmatively to the second." It is said that this is so, unless a particular custom exists; for in many places, especially in Gallus, it is customary for the Bishop to nominate honorary canons without seeking the opinion of the Chapter, and the Holy See has not disapproved of this practice, but rather, considering the particular circumstances, has often ratified and confirmed it, as appears from the decrees of January 14, 1860, and April 28, 1880.

Whether it is expedient for the Ordinary to grant such power, as is re-

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quested, in a similar matter, is a matter that does not seem to be without discussion. For in the first place, it concerns the nomination of honorary canons in Chapters that are practically extinct and without revenues.

[*Latin ed. p. 357*]

MARSORUM 357 • are lacking. Furthermore, to call non-existent or almost extinct members to the honor, seems ridiculous in itself, and is a breeding ground for ambition, by which, indeed, some will be given an opportunity in those places, to carry about honors and insignia easily acquired. Indeed, this seems contrary to the canonical and accepted rule: for if care is taken in the appointment to the honor, that regard be had to the number of titulars, so that there are not more honorary members than beneficed members, where these are lacking or will soon be lacking, it would not seem possible to establish the former. However, the Bishop is moved by a holy and most excellent reason to request the institution of honorary members, namely, to restore or increase the divine worship in collegiate churches. And therefore, he proposes to obligate the honorary members to serve in the choir at least on feast days, and perhaps to undertake other duties as well. But, from this prescription of duties, whether many or few, a new confusion and relaxation of the law would arise; for it is received and established that honorary members are without the rights and duties of the titulars, according to the teaching of Fagnani, which all accept, where in chapter 19, concerning benefices and dignities, it is taught that the canonry to the honor "is a name without substance, a windy dignity, a vain and empty nomenclature." Furthermore, there is the danger of dissension between the new honorary canons and the old beneficed canons who still remain. For it is evident that these latter will not receive the new confreres with a cheerful spirit, as can be seen from the testimony of the Bishop himself. Therefore, the Ordinary insists on choosing the honorary members from himself and without the suffrage of the chapters, because he knows well that the beneficed canons will certainly not give their consent to the appointment of honorary members, especially of those honorary members that the Bishop desires. Finally, it is very uncertain whether the end to which the Prelate intends by the appointment of honorary members can be safely attained. Since it is alien to human nature to perform service, especially if it is not light or perfunctory, but continuous.

[*Latin ed. p. 358*]

MARSORUM, 358, and let it be performed seriously and diligently, without reward and without penalty. At the beginning, indeed, both because of the novelty of the matter, and because of the responsibility arising from the recently received honor, newly elected individuals will be inflamed with zeal for service; but soon, because of the weakness inherent in human nature, the initial fervor, which is supported by no sanction and no gain,

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will diminish, and the canons will either abandon or negligently perform their choral duties, for the most trivial of reasons, and then, truly, out of sheer laziness; and thus, scandal will be caused among the people, rather than edification, and disgrace will result, perhaps, rather than an increase in the divine worship. With these things noted, the question arose as to how the prayers should be dismissed. RESOLUTION. The Sacred Congregation of Councils, having knowledge of the matter, on July 6, 1889, decided to respond: Regarding mere honorary canons, negatively. PARIS. MARRIAGE. On July 6, 1889. Session 24, Chapter 4, concerning Marriages. On July 4, 1878, in the parish church of Saint Vincent of Paul, in Paris, a military man, Ernest Dupuy, took as his wife, Caroline Marguerite Barbe. The spouses lived a peaceful life for several years, also blessed with children, but suddenly something happened, as a result of which the man considered and decided to reject his wife and return her to her parents, as was done. Then, the man, considering obtaining a civil divorce, consulted with a certain religious person about this matter, and learned from him that his marriage with Marguerite was perhaps invalid due to an impediment of consanguinity of the third degree in the collateral line, for which no dispensation had been requested. These events, which began in the early part of 1886, led the man to petition the archiepiscopal Curia of Paris to examine the case. SUMMARY OF THE FACTS.

[*Latin ed. p. 359*]

PARIS. 359 Witnesses were examined; a genealogical chart was presented, along with parochial testimonies regarding the birth and baptism in each instance, and since it was established that there existed a clear impediment of consanguinity, the Archdiocesan Court of Paris rendered the following judgment: "It is established that the marriage between Ernest Dupuy and Caroline Barbe is null... because it was contracted with a vitiating impediment of consanguinity; however, the legitimacy of the children born remains intact." A synoptic summary: The defender of the marriage, acting ex officio, interposed an appeal to the Sacred Congregation of the Council, presenting the same documents, namely: 1. A genealogical chart of both spouses' families, from which it is proven that Ernest and Marguerite were bound by an impediment of consanguinity in the third degree of the collateral line; 2. Testimonies of birth and baptism which demonstrate the same; 3. Witnesses who all testify that they knew of the degree of kinship between the spouses, but did not consider requesting a dispensation. Only the priest who was celebrating the marriage at the time, the Coadjutor of St. Vincent of Paul, testifies that he was unaware of such an impediment. The defender of the marriage did not challenge the substance or truth of the documents, but maintained that the matter should be rejected on formal grounds. Furthermore, he stated that in such matters, the argument should primarily be drawn from the

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parochial records, as taught by the Instruction of the Sacred Congregation of Propaganda Fide of the year 1883, part I, article 1: ”Carnal kinship, and also affinity, which proceeds from a previous marriage, are determined from the genealogical chart of both families, drawn up from the records of marriages, and also from the baptismal records, in which the names should be noted not only of the spouses and of those who were baptized, but also of the parents...” Such documents, in authentic form, are taken from the aforementioned records.

[*Latin ed. p. 360*]

360 PARIS. ”The works of the parish priests or the curia must be examined, together with ”the testimony of identity with respect to the respective particles in the ”existing books; indeed, if a testimony has been given by a parish ”priest, it will be necessary for the signature of the same parish ”priest to be declared authentic by the episcopal curia.” ”Indeed, Barbosa teaches that the document must be made with a ”formal transcription of the particle word for word, and he concludes: ”Otherwise, any faith, or attestation of the parish priest, ”whatever words it may be conceived in, without a ”formal transcription of the particle, is invalid.” ”De off. et pot. parochi part. 1 c. 7 n. 21. Moreover, the Defender affirmed that not even one ”attestation of a parish priest, endowed with the aforementioned ”conditions, should have any value. He also rejected the argument ”drawn from the hearing of witnesses, because it is contrary to what ”is established in Chapter 47 §. Witnesses, De test, and attes. ”do not indicate with sufficient circumlocution, nor do they ”distinguish individual gradus in Karlova with a precise calculation. ”Therefore, he concluded that the sentence of the archiepiscopal ”curia of Paris should be overturned, because the dispute about the ”non-obtainment of a dispensation is entirely useless, with no ”formal and legal argument presented regarding the existence of ”consanguinity. The purpose was to determine whether the sentence ”of the archiepiscopal curia should be confirmed or overturned in ”this case. RESOLUTION. The Sacred Congregation of the Council on ”July 6, 1889, responded: The sentence is to be confirmed.

[*Latin ed. p. 361*]

361 COLOGNE. CONSTITUTION AND ESTABLISHMENT OF A BENEFICE. August 3, 1889. By summary petitions. SUMMARY OF FACTS. The Archbishop of Cologne, a few months ago, sent the following letter to the Sacred Congregation for the Oriental Church: ”Peter Rutger Schos, a priest who formerly served as steward in the noble house of Bürgel in the Archdiocese of Cologne, in his will, completed on April 29, 1738, established the following regarding a certain benefice, for the benefit of the inhabitants of Bürgel: ” - 2. ”From my entire inheritance, I wish this benefice to be established here in Bürgel.” - 7... ”The remainder I

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will arrange if God grants me a longer life." The aforementioned house of Bürgel, situated on the right bank of the Rhine, together with its inhabitants at that time, belonged to the parish of Zons, also subject to the Archdiocese of Cologne, but lying on the left bank of the Rhine. Since the Rhine, flowing between Zons and Bürgel, made access to the parochial church in Zons, and conversely, the administration of the sacraments of Holy Communion and Extreme Unction in Bürgel, particularly difficult, especially in winter and at night, the pious testator founded the aforementioned benefice in the church of Bürgel, dedicated to Saint Mary, in order to alleviate these difficulties. But the founder, by his premature death in the same year, 1738, was taken away before he could arrange the remaining matters, so it was incumbent upon the Ordinary to determine more precisely the nature of the benefice and the duties of the beneficiary. Therefore, the Vicar General of this Archdiocese of Cologne, on July 20, 1743, by order of the Archbishop, established this benefice under the title of Saint Anthony in the local church of Bürgel, according to the following law: "a) On each Sunday and on holy days by command, the beneficiary shall celebrate the Holy Sacrifice of the Mass in the aforementioned church of Bürgel, with a homily added.

[*Latin ed. p. 362*]

362 COLONIEN. Quae saltem ad quartam horae partem produceretur, adiecta insuper horis postmeridianis catechesi et recitatione publica rosarii. « b) Certis diebus ferialibus pro anima fundatoris defuncti, Sacrificium Missae offerret. « c) Personaliter et continuo, m Bürgel vel in Ordenbach (qui quidem locus nunc ad parochiam Benrath vicinam adscriptus est), residendo, pastori loci, in quo ipsum residere contingat, ad discretam eiusdem requisitionem pro viribus in cura animarum assistat, singulariter tamen sedulam ac continuam animarum in domo Bürgel existentium curam gerere teneatur. « Praeterea, Vicarius generalis beneficium, de quo agitur, tam incompatibile quam liberae prorsus collationis esse voluit. Quod si inter fundatoris consanguineos sive paternae sive maternae lineae inveniatur qui ad obtinendum idem beneficium sit idoneus, is in beneficio conferendo prae extraneis praeferatur. « Tandem, Vicarius generalis tres viros (sc. dominum domus Bürgel, dummodo catholicae fidei addictus sit, parochum dictae parochiae Zons, necnon Officii Vicariatus Protonotarium) elegit, qui bonis beneficii diligenter administrandis invigilarent. Quorum tamen loco, inde a lege Borussica diei 20 Iunii 1875 de administrandis bonis ecclesiasticis lata, quam legem ad maiora praecavenda mala S. Sedes observare permisit, collegium curatorum, qui bonis parochiae Monheim administrandis ad normam legis praedictae vacant, substitutum est, quae quidem mutatio a me postea ratihabita est. « Occasione nempe revolutionis sic dictae Franco-Grallicae, qua huius initio saeculi Archidioecesis nostrae pars in sinistra Rheni ripa sita, ideoque etiam supradicta parochia Zons

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avellebatur, locus Bürgel dein parochiae Monheim in dextera Rheni ripa iacenti adiunctus est, eidemque parochiae, etiam Archidioeceos partibus iterum ut antea adunatis, ad hunc usque diem adiunctus permansit. « Distantia vero inter Bürgel et ecclesiam parochialem.

[*Latin ed. p. 363*]

COLOGNE. 363. Monheim is one hour and a little more (or approximately 4 Italian leagues) distant. However, between Monheim and Bürgel, situated at an equal distance from both, there is a village called Baumberg, which is also attached to the parish of Monheim and includes more than 1085 faithful. Bürgel, on the other hand, has only a few faithful remaining, now barely twenty, and all or almost all of them are servants or officials of the owner of the house in Bürgel, who does not reside there, but lives far away in Westphalia. The church, in which the benefice of St. Anthony was formerly founded, lies ruined by the ravages of time and the neglect of men. "The number of faithful in the entire parish of Monheim (including the inhabitants of Baumberg and Bürgel) is 3157. Therefore, it has seemed useful, and indeed has been so for almost forty years, that the village of Baumberg should be separated from the parish of Monheim and erected into a new parish, so that the parish of Monheim would retain approximately 2000 faithful, while the remaining part, which is located in Baumberg and Bürgel, would be assigned to the new parish of Baumberg. "Indeed, the faithful of Baumberg have already built a new, large, and beautiful church in Baumberg, and have also acquired a parochial house. However, what is required by canon law for the erection of a new parish, namely a sufficient endowment, is lacking. The people of Baumberg have exhausted their resources so much in building the aforementioned church and parochial house that they are unable to provide the necessary endowment. "Furthermore, the benefice of St. Anthony in Bürgel enjoys very substantial revenues, which amount annually to 4165 German marks, or approximately 5206 Italian lire. The church, or chapel, of St. Materna in Bürgel possesses absolutely no income from which it could be restored; moreover, it seems to be of far greater benefit to the salvation of souls in every way that the revenues of the benefice should be applied not to restoring the church of St. Materna in that small village of Bürgel, but rather to endowing the new church in Baumberg, which has already been built. For the village of Bürgel, as has been said, has barely twenty faithful.

[*Latin ed. p. 364*]

364. COLONIEN. includes, and is only half an hour's journey (or two Italian leagues) from Baumberg, with an easy road leading between them. Therefore, the burden that would be imposed upon the inhabitants of Bürgel, namely that the benefice of St. Anthony would be transferred, or rather, that this church would be sufficiently endowed, can be considered

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either very heavy or very light, depending on whether one considers the benefit of more than a thousand inhabitants of Baumberg. For the church in Bürgel has long been so ruined that Mass could not be celebrated there. Therefore, it is noteworthy that both the colleges of curators responsible for administering ecclesiastical goods in Monheim and Benrath, and even the Borussian government itself, have entirely agreed that the assets of the benefice of St. Anthony should contribute to the establishment of a new parish in Baumberg. "Furthermore, it is intended that the distribution of the assets of said benefice be such that it adequately satisfies both the obligations of the benefice and the needs of all those who have previously benefited from it. After setting aside a portion of the assets of the benefice in question for the Masses that have been, and will continue to be, celebrated by the former beneficiary, and then by the rector of the church of Baumberg or his vicar, and after setting aside two other portions for the parishes of Monheim and Benrath, to compensate them equitably for the services that the inhabitants of Bürgel previously enjoyed from the benefice, only what remains is entirely sufficient to endow the new parish of Baumberg. "For these reasons, it is easy to believe that the pious testator, if he were still alive, would have chosen to benefit one thousand one hundred faithful in Baumberg rather than twenty in Bürgel, and even more so, because the reason for which he provided for his assets, namely, to benefit the church located across the Rhine, no longer holds true. "Therefore, humbly prostrating myself before Your Eminence, I earnestly request that you deign to grant me the permission whereby I may apply the benefice of St. Anthony, which has been vacant for a long time, to the endowment of the new parish church in Baumberg, as explained above."

[*Latin ed. p. 365*]

COLONIEN. 365. A Synopsis of the Matter. Therefore, the petition is principally directed towards obtaining 1. the transfer of the benefice of St. Anthony from the church of Bürgel, dedicated to St. Maternus and now destroyed, to the new parochial church of the place of Baumberg, and 2. the obtaining of some dismemberment of the same benefice in favor of the parishes of Benrath and Monheim. Regarding the erection of a new parish in Baumberg, through the dismemberment of the parish of Monheim, the Ordinary, using the faculties granted to him by the Council of Trent, Session 21, chapter 4, concerning reforms, undertakes to establish it according to the sacred canons and rules of prudence, and raises no doubt about this matter. With regard to the transfer of the benefice of St. Anthony from the church of Bürgel to the new parochial church of Baumberg, so that this may be endowed with a suitable endowment, it has been observed that the law of the pious founder, the tablets of the testament, would be violated, and the inhabitants of the place of Bürgel would be deprived of a benefit instituted for their particular advantage. And therefore, the principles

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of both laws are well known, which caution that the pious wills of the faithful, whether expressed or implied, must be observed, unless urgent necessity or evident utility demands otherwise. But, on the other hand, if it is considered 1. that there are only twenty inhabitants in the place of Bürgel, and therefore it seems superfluous to have such a large benefice for so few faithful; if it is considered 2. that the church of St. Maternus is destroyed, and therefore it is practically impossible to fulfill the bequest, nor can it be hoped that those buildings will be restored by the twenty inhabitants of the place, especially since, not far from them, in the new parish of Baumberg, a suitable church has been built; in this case, the proposed transfer of the benefice is, and is even necessary, according to the precepts of the Council of Trent, Session 21, chapter 7, indeed. If it is considered 3. the great change in circumstances regarding the conditions and needs of the place of Bürgel; for this place was formerly united to a parish located across the Rhine, while today it is connected to the church on this side of the river; therefore, the transfer of the benefice does not seem to offend the will of the founder, nor the rights of the inhabitants of Bürgel.

[*Latin ed. p. 366*]

COLOGNE. 366. Indeed, it has been admitted by the very administrators of the benefices: if, moreover, we consider the favor with which the canons pursue the constitution and endowment of a needy parish, as has been done, and as the Sacred Congregation of the Council has granted on several occasions, not only unions of benefices, but also suppressions of pious legacies and reductions of masses, as is evident from the records of the Parish of Tusculum, December 17, 1804, and May 25, 1805, Fagnan, book 7, On Church Buildings, number 33; while in the matter of reductions of masses, no demand is made, which, indeed, is promised in the translation of the roof and covering; if, I say, all these things are considered in their entirety, it does not seem unreasonable to request the translation of the benefice. As for the dismemberment, or separation of a portion of the assets from the benefice of St. Anthony, in favor of the parishes of Benrath and Monheim, a just cause is always required for establishing it, namely, a moral necessity or evident utility, which cannot be provided in any other way; nor is abundance of revenues sufficient, for benefices, because they are plentiful, cannot be divided and applied to different places. Furthermore, the principal reason alleged for the dismemberment is that the parishes of Benrath and Monheim, which have hitherto received some assistance in the care of souls from a priest endowed with the benefice of St. Anthony, may be somewhat compensated. With the foregoing in mind, the question was raised as to how the petitioner's requests should be granted. RESOLUTION. The Sacred Congregation, having knowledge of the matter on August 3rd, decided to respond: For the grace requested, it is granted. PARIS. MARRIAGES. August 3, 1889. Session 24, chapter 1, On Reforms. SUMMARY

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OF THE CASE. On August 20, 1888, Aloysius Ghislain, Count d'Estourmel, and Maria Antonietta Oppenheim were lawfully married.

[*Latin ed. p. 367*]

PARIS. Three hundred and sixty-seven marriages took place in the parish of Sèvres, near Paris, after the publication of only one banns, with all other dispensations granted. The marriage arrangements were quickly finalized, because, as many said, the parents of the bridegroom, Aloysius, wished to quickly end the shameful relationship of their son with a certain Joan, whom they desired to be rid of. This matter remained hidden until the very end, both from the bride and from the bride's parents, because friends and relatives who could have informed the Oppenheim family either feared to do so, or only after the civil marriage had been contracted did they learn of these marriages, and discovered that Aloysius d'Bstourmel was bound by these vices. Under these conditions, the marriage could not fail to lead to disastrous consequences from the very beginning. Indeed, as soon as the bridegroom began the wedding journey in the customary manner, the husband often deserted his wife, both on the road and in various inns, and he spent time with a prostitute, whom he kept, delaying matters so that he might conceal this from his wife. And when the bridegroom and bride quickly returned to Paris, the situation seemed to worsen. Indeed, although Aloysius's parents tried everything to rescue their son from the mire of vice and to drive away the mistress, nevertheless, all their efforts were in vain. Therefore, Maria Antonietta finally returned to her parents' home, and on October 1st, that is, forty days after the beginning of the marriage, she petitioned the Most Holy [See] to grant her a dispensation from this disastrous marriage, which was declared to be valid. The investigation of the case, according to the petitioner's request, was entrusted to the Archdiocesan Court of Paris. The plaintiff and her husband were heard, and then four witnesses on the part of the husband, and seven on the part of the woman, and finally, a physical examination was performed by two doctors in a charitable house of Augustinian nuns, in the presence of one of the religious sisters. The summary of the woman's defense divided the matter presented by her advocate into three parts; in the first, she presented her DEFENSE.

[*Latin ed. p. 368*]

368. The Parisian [author] explains that the marriage was not consummated, first by presenting the reasons for the dispensation, and finally by detailing certain difficulties. Beginning with the first point, he recounts and compiles numerous testimonies, both of men and women, and of witnesses, from which it is gathered that the Count of Estourmel had behaved so disgracefully that he not only disdained his wife from the very beginning of the marriage, but also abstained from consummating the marriage, and did

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not even attempt to do so. It suffices here to mention one or two testimonies. First of all, the Count of Estourmel himself, under oath, affirms: "I did not conceal my family affairs, nor did I hide my other friendships, about which I had not informed [my wife], even though I had begged her parents to keep this secret. Perhaps I desired this at the time of the marriage, which was entered into by force and without love." The same is confirmed by the Count of Savignac. Furthermore, the Baron Robert Oppenheim, the Marquis of Lentilhac, the Vicountess of Saint-Jean, the Vicounts and Vicountesses of Savignac, and others, all concur in this sense, and speak of the man's bad character. Therefore, it is not surprising that, scarcely after the marriage was celebrated, the Count afflicted his wife with contempt and insults, as she recounts: "On the very day of the marriage, as we were leaving the church, my husband behaved in a most ungracious manner; indeed, at the time of dinner, he spoke of his fur [coat]. Later, when the husband entered the bedroom, he asked if I had been informed by my mother about the matters of marriage; and when I replied that I had learned these things through my sister, he said that all these things could not take place on this very night, and he again spoke of his fur [coat]. He approached my bed, but he slept peacefully throughout the entire night." Faced with this behavior, I was astonished, and I wept bitterly. The Count himself, explaining the reason for the lack of consummation of the marriage, said: "I had not previously considered abstaining from the consummation of the marriage, but from the very first day, I was so sad and uncertain about the future that I considered it prudent to make this decision. Therefore, I can absolutely confirm that I had no carnal relations with the young woman Oppenheim." This is confirmed by the confession of a woman, who...

[*Latin ed. p. 369*]

PARIS. By oath, she asserted that she was still a virgin. Baron Robert Oppenheim testified that he knew, from his own sister, that she was still a virgin after the journey, on the occasion of a marriage that had been completed. And thus, Lady Stahorovich, the Marquis de Lentilhac, the Viscount de Savignac, and others, who also testify to the Countess's fidelity and piety, and attest that she is endowed with all virtues, deny this, as the Archbishop of Paris himself confirms. Indeed, the faith of spouses, as affirmed by oath, is to be held in great esteem; and it is reported by St. O. in January, Dispensation 20 May 1719, and Conrad, Practice of Dispensations, book 6, chapter 7, number 36 and following, that a dispensation from a valid marriage has been granted based solely on the confession of the spouses. This is all the more so if the one making the oath is of proven conscience, as the Glossary states in the chapter "Midier de iure iurand." And especially when the testimony of both spouses is supported by a seventh witness, with no one contradicting. How important judicial testimonies are for excluding consummation is shown by Consci De separati, Thor, book 1, chap-

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ter 16, number 13 and following; and this even if they are given by relatives and servants, as the Rota states in a recent decision, number 115, paragraph 18, in Romana Separat, Thor, March 9, 1760, § 7, before Camillac, Cardinal De Luca, De Matrim., Discourse 2, number 11. But, the advocate continues, the fullest and greatest moral certainty of an unconsummated marriage is derived from a medical examination properly conducted in Paris; because expert doctors have found the hymen to be perfectly intact, and no lacerations or myrtiform excrescences were found on the Countess's female genitalia; which, according to the authors Zacchia, Rudel, and Barzellotti, who are the greatest authorities in anatomy and forensic medicine, are of the utmost importance for making a judgment about virginity. Indeed, Doctor Bucquoy, responding to the questions posed by the defender of the marriage, explicitly affirms that, if there is a case in which virginity can be determined by a medical examination, this is the safest way to know. However, experts are usually used for judging, rather than for testifying, as De Luca states in Discourse 33, number 20, and the Abbot states in chapter 4 of "Proposuisti" in Acta, Volume XXII, page 258, paragraph 24.

[*Latin ed. p. 370*]

370. PARISIEN. After these considerations, the advocate proceeds to present the reasons for which the grace of a dispensation may legitimately be granted. He states that the first reason is that a simple girl consented to the marriage because the man concealed from her that he was stained with the vice of lust. If the countess had discovered, after the marriage, the shameful habits of the man, she would never have entered into a union with such a person. This, he argues, is a legitimate cause for a dispensation, as affirmed by the Doctors Lancellot, Sánchez, De Luca, Pirr, Corrad, and Ursava. And for this reason, examples of dispensations granted by the Pontiff are cited by Burgatius in *De Irregularitatibus Matrimonii*, part 6, number 1, in *De Spensis*, number 17, Corrad in *Practica de Dispensationibus*, book 8, chapter 7, number 35, and others. Furthermore, this reason has been highly valued by the Sacred Congregation, as can be seen in the Nicene Session of the Curia, March 12, 1786, in *Albiganen. Matrim.*, September 12, 1807, and in other documents. A second reason for a dispensation is derived from the husband's adultery, since it is established in law that even the suspicion of adultery can be a cause for a dispensation. This is stated by Consci De Separatis, book 1, chapter 16, number 269. A third reason is the most serious and insurmountable aversion of the spouses; according to Ursava, *Disputationes*, 24, number 60, and following, volume 3, part 2, from which aversion, the doctors state, even grave scandals and dangers can arise. This is also mentioned by Corrad in *Practica de Dispensationibus*, book 8, chapter 7, number 36, and by the Sacred Congregation in the Neapolitan Nullities or Matrimonial Dispensations, November 29,

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1862. Here, the advocate recounts, through lengthy testimonies, that reconciliation between the spouses is absolutely impossible. The Countess d'Estourmel, deeply offended by the dishonorable behavior of her husband and by the deplorable state of his life, and bearing a bitter spirit, finds herself increasingly neglected, disrespected, and made a laughingstock by the adulteress, Joan, and she detests her husband above all else, and desires nothing more than to be legally separated from him. A fourth reason for a dispensation is the consent of both spouses, which many consider to be a valid reason, as stated by Vincent de Iusto in *De Dispensationibus*, book 2, chapter 10, number 28, and by Corrad in *Practica de Dispensationibus*, book 12.

[*Latin ed. p. 371*]

PARISIEN. Book 3, Chapter 16, number 9, and the Holy Congregation concerning marriages, dated September 12, 1801; especially if the nobility and wealth of nations are involved, because reconciliation is then rarer and scandals are more apparent; and most of all, if, as is stated, the woman has presented a petition for a dispensation shortly after the beginning of the marriage. Sánchez De Matrim, disputation 109, number 19. Therefore, the archiepiscopal court, while declaring the restoration of conjugal life between the spouses to be impossible, commends the woman with the most eloquent words. The final cause for the dispensation is that the petitioner places the spiritual benefit of the one seeking the dispensation at the forefront, citing numerous authorities relevant to the matter, as well as resolutions of the Holy Roman Rota and the Holy Congregation. Finally, addressing the third point, the advocate dilutes certain objections of little importance, especially concerning the incomplete testimony of seven witnesses from the side of the man, and the absence of the midwife. Regarding the first, he responds that only four witnesses could be found from the man's side, and that the man, when invited to summon witnesses, responded: "I lack witnesses to present." And since this deficiency did not arise from the woman's actions, no prejudice should be imputed to her. Holy Congregation, in Varsavien, May 14, 1887. As for the absence of the midwife, he states that it was abundantly compensated for by the physicians, who, not from hearsay, but from observation and fact, recognized the virginity; and furthermore, this custom, which prevails in some provinces of France and other regions, has not been disapproved of by the Holy Congregation, as can be seen in the cases of Venice, July 28, 1860, in Padua, September 23, 1865, and in Olinden, September 1, 1883.

(1) OBSERVATIONS.

The defender of the marriage bond notes, according to the judgment of experts, that there are so many defects that little reliance can be placed

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upon it. Indeed, if the experts only testify in their report about the integrity of the hymen. However, it is clear from Zachia, Quaestiones med. leg. I, 4, title 2, question 4, number 28, that a virgin "can be deflowered, and even conceive, without the hymen being broken." (1) Olinden, report Mt Vol. XVI, 215.

[*Latin ed. p. 372*]

372. PARISIEN. Therefore, in order to confirm virginity, besides the integrity of the hymen, other aids should also be considered, according to what Zachia states in question 2, number 16; but those skilled in the matter neglected to do this, speaking only of the integrity of the hymen. Furthermore, the physical examination should be performed not by midwives, but by physicians; and this is contrary to natural decency, as condemned by the canons in chapter "Proposuisti De probat," and chapter "fin. De frig. et male fi.," and by the Instruction of the Sacred Congregation of the Council of Trent of August 22, 1840. Moreover, it does not provide a complete guarantee of truth and justice, either because men are more easily moved by a woman's tears, or because, especially in these times, men are less scrupulous in conscience than women. Furthermore, according to the instruction of the Sacred Office, the woman's body should be examined "separately by each individual, with a matron always present," and immediately afterwards, each individual should separately write down a report. But in this case, the examination was performed together by several experts, and the matron present was not a married woman, but a religious woman; which seems less appropriate. Therefore, the defender concludes, little credence should be given to this examination, nor to the testimony of the husband and the "seventh hand" witnesses. For the husband's statements are suspect of collusion, because both the husband and wife have not only consented to the dissolution of the marriage, but also contend against it. Therefore, Sánchez De matr. I. 2, disp. 45, n. S teaches in these terms: "A confession is not probative when it is favorable to the matter in question." Furthermore, the testimony of the "seventh hand" witnesses is not absolutely reliable in all cases: for in the beginning, only seven were introduced from the woman's side, while only four were present from the husband's side, and these spoke with little caution. Moreover, there is not complete agreement in the testimonies; indeed, while the actress and the witnesses introduced by her speak extensively of the disreputable love of the defendant, on the other hand, the defendant's father, the Marquis d'Estourmel, when questioned about this matter, replied that he did not know that his son's passion was so violent that it would prevent him from entering into marriage. Similarly, the actress's mother...

[*Latin ed. p. 373*]

The Parisian [newspaper] asserts: that the bride's mother exerted pres-

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sure for the conclusion of the marriage; which the aforementioned [parties] deny. Furthermore, the actress and her maid, Tetard, testify to the constant presence of the pellicle [condom] on journeys, in inns, in Geneva, as well as in Paris; but Charles, the servant of Count Tetard, on the contrary, reports that he saw nothing, heard nothing, and suspected nothing. Moreover, it is stated that nine of the witnesses brought forward declared that they had received from the Countess or from the Count, or from both together, that the marriage remained unconsummated. However, the testimony of these witnesses is only as valid as the source from which it is derived, namely, as the authority of the spouses. But the spouses are not immune from the suspicion of collusion, because they are seeking to dissolve the marriage. Furthermore, in order for the testimony of a seventh party to be considered valuable, it is necessary, according to the instructions of the Sacred Congregation of the Council, that "each witness, after having first read the examination, be questioned as to whether they have perceived the religion and honesty of that spouse... and whether they believe him to have spoken the truth." Indeed, in this case, not one of the witnesses knew the judicial assertions of the spouses, and only three were questioned as to whether they perceived the actress's religion; but no one was questioned as to whether they believed the Count to have spoken the truth. However, the defense argues, not only is the consummation doubtful, but furthermore, the causes for the dispensation have not been explored. Not, firstly, the deceit of the husband in concealing his shameful love; since he himself stated: "It was well known within my family that I had entertained other friendships; and this was not unknown to the Oppenheim family." And this is confirmed by Robert Oppenheim, the actress's father. Not adultery; for if this occurred, it was also remiss; since the actress testified that she was prepared to forgive and to bury all in oblivion, if the husband would change; as is evident both from the testimony of the actress herself, and from the assertions of the Marquis d'Estourmel. Not aversion of the spouses; since this does not seem to be great; nor entirely incurable; since the husband wrote, and affirmed with great esteem, that he pursued his wife.

[*Latin ed. p. 374*]

374. PARISIEN. Neither is the consent of the spouses required; because, although marriage, even if not consummated, possesses a strength derived from divine law, it is evident that, when the legitimate cause ceases, the sacrament cannot be dissolved by the mutual consent of the spouses. Therefore, this cause does not exist in law; but neither does it exist in fact; for, from what has been stated above, it is clear that the wife was disposed to be restored to the marital union, if the husband were to change his ways. Finally, the reason for the spiritual benefit of the spouses does not hold; indeed, it demands that the husband, having purged the crimes of his former life and having begun a new way of life, should return to his legitimate wife,

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and live with her, whom he considers and loves, in a Christian manner. Having stated these things on both sides, the purpose was to be clarified. It is doubtful whether consultation with the Most Holy Fathers is necessary regarding a dispensation from a valid but unconsummated marriage in this case. RESOLUTION. The Sacred Congregation, having considered the matter, decided on August 3, 1889, to respond: Affirmative.

[*Latin ed. p. 375*]

37th APPENDIX V. wherein more matters are referred concerning the Decrees of the Congregation of Sacred Rites. CONGREGATION OF DISCALCED CARMELITES. The Reverend Father Procurator General of the Discalced Carmelites presented to the Congregation of Sacred Rites that in the perpetual Calendar of the Order, approved by the same Congregation on the 26th of June, 1850, the feast of Saint Peter, Bishop and Martyr, is celebrated on the 15th of February, and on the immediately following day, the Commemoration of the Saints, whose bodies and relics are preserved in the churches of the Order; and that these two feasts, by a benevolent decree of the aforementioned Congregation, dated the 8th of March, 1883, were transferred from the rite of lesser observance to the rite of greater observance. However, it happened that the Calendars of the Order differ concerning the manner of ordering the Vespers on the 15th of February; therefore, the Orator humbly supplicated for a solution to the following doubt, namely: How should the Vespers be ordered in this concurrence of offices? And the Sacred Congregation, after hearing the opinion of another from the Masters of the Ceremonies of the Apostolic See, judged it fitting to declare as follows: In this case, the Vespers should be shortened, namely, recited by the chapter from the following. And thus it declared and decreed. On the 11th of January, 1884. URGELLEN. The Master of Ceremonies of the Cathedral Church of Urgellen, in Hispania, with the consent of his Bishop, humbly requested the Congregation of Sacred Rites to provide a solution to the following doubts, namely: Doubt I. Whether, on Sundays and on more solemn feasts, according to the memorable practice, the priest, wearing a surplice and a black stole, may sing the prayer for the Dead after the recitation of Vespers or the Rosary, so that the people are not afflicted with sorrow? Doubt II. In the Kingdoms of Aragon and Valentiae, as well as in the Principality of Catalonia, on the feast of the Most Holy Body of Christ, the Mass is sung with the exposition of the Most Holy Sacrament, which remains exposed until Vespers, after which are celebrated, the most solemn procession with the Most Holy Sacrament. Hence, the question arises, whether, for a greater solemnity of the feast, the Pontifical Mass may be sung, as is done in some places, with due care taken to prevent...

[*Latin ed. p. 376*]

376 APPENDIX V. Concerning matters to be guarded against regarding

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irreverence towards the Most Holy Sacrament?

Doubt I. Whether, in the performance of the votive Office of the Most Holy Sacrament, together with the votive Office of the Passion of Our Lord Jesus Christ, Vespers ought to be celebrated by the Chapter of the following day, with a remembrance of the preceding day; or rather, whether the entire Office ought to be said of the Most Holy Sacrament without any remembrance of the Passion?

Doubt II. Whether, after the Decree of the Holy Roman Church, given on the 16th of September, 1865, in Cathacen, the doctrine, which De Herdt transmits in his Liturgical Practice, volume 2, number 278 (edition of the year 1876), can be maintained, namely: that if a feast having an octave coincides with a Sunday, and if it is impeded by another feast of greater rank or dignity, which, however, does not have an octave, and no day within the week is free, it can be transferred to the day of the octave, or to the following Sunday, on which otherwise the feast of the octave would be celebrated, if the feast is attached to a Sunday (Holy Roman Church, 7th of December, 1844), but not if the day of the month already falls on a Sunday! Should this be the case, it is to be transferred after the Sunday (Holy Roman Church, 16th of February, 1754)?

Doubt III. Whether, in the Offices of Saint Peter of Alcantara and Saint John of the Cross, of the second class, recently introduced, as well as of Saint Francis Borgia, also of the second class, in Spain, and of Saint Francis Xavier, of the first class, in this Diocese of Urgellen, the Lessons of the first Nocturn of the second part, beginning with "Blessed is the man," ought to be recited, as was declared for the Saints Dominic of Guzman, Ignatius of Loyola, and Joseph of Calasanctio, on the 16th of May, in the year 1871?

Doubt IV. Whether the double (non-Doctor) or semi-double Office coinciding with the feast of Saint Mathias the Apostle, on the 25th of February in a leap year, ought to be reduced to a simple Office, according to the new Rubrics, or whether the Decree of this Holy Roman Church, of the 1st of March, 1681, for one Order of Minorites, ought to be observed?

Furthermore, the Sacred Congregation of Rites, after hearing the opinion of another of the Masters of the Apostolic Ceremonies, in response to the following Doubts, has approved the following answers:

To I: Negatively, in more solemn feasts.

To II: Affirmatively.

To III: Negatively, for the first part; affirmatively, for the second part.

To IV: It can and ought to be maintained.

To V: They are to be taken from the Offices already approved for other Orders.

To VI: The Decree of the Sacred Congregation of Rites, and the particular rubric of the Breviary, are to be observed.

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And so it was written.

On the 11th of January, 1884.

ALBENSI.

The Master of the Sacred Ceremonies in the Diocese of Alba, by order of his Most Reverend Ordinary, to the Sacred Congregation of Rites, the following Doubts.

[*Latin ed. p. 377*]

I. For a suitable solution, it is humbly proposed the following:

I. Question: If a feast day is to be transferred due to its occurrence coinciding with another feast day, or a day of greater importance, must it be entirely transferred to the first free day (even if it falls within the common octave), or can it only be transferred, especially when there are few free days remaining at the end of the year, in which the feasts must be celebrated?

II. Question: When multiple transferred feast days of equal rank occur, should the priority of the transfer or the dignity, or the circumstance of the primary office, be considered in the transfer?

III. Question: The response of the Holy Ritual Congregation, dated August 27, 1836, in a minor document concerning the Lections III Nocturni in the Octave of St. John the Baptist and the Octave of the Dedication of the Church, is it to be extended to all octaves, and to all days within octaves, and to the octave day itself, as the text of the response seems to suggest?

IV. From the Apostolic Letters of Our Holy Father Leo XIII, dated July 20, 1882, the feast day of St. Cyril, Bishop of Alexandria, Confessor, and Doctor of the Church, was fixed on February 9th. In the diocesan calendar of Alben, this day is assigned to the feast day of St. Titus, Bishop and Confessor; however, the days of the 21st, 27th, and 28th of the same month are still free. But the 21st and 26th are occupied by other feast days that have been permanently transferred for some parishes. Therefore, should the feast day of St. Cyril be definitively transferred to the entirely free day of the 28th, so that all churches celebrate the same feast day on the same day? Or, if a new assignment is made for the 21st, should the existing assignments be maintained for the aforementioned parishes, and should the first free day be assigned to those parishes?

V. In some editions of the Roman Breviary, in the Feast of the Blessed Virgin Mary's Motherhood, the third verse of the hymn in the first stanza, at Matins, reads "Ubi caduca membra," while in some other editions it reads "Ubi futura victima." Which reading is the authentic one?

VI. According to the rubric of the Missal (title VIII, n. 8) and the Ceremonial of Bishops (book 2, chapter VIII, ann. 69 and 72), the thurifers enter the altar from the "Sanctus" until the elevation of the chalice, or until the consummation, if anyone is to receive Communion, or if the Mass is either

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for the Requiem or for the fast of Vigils. It is asked whether, for the sake of greater reverence for the Sacrament, it would be permissible for these thurifers, with their lit torches, to remain at all solemn Masses until the completion of the Consummation, or even until the return to the Sacristy?

VII. According to the Decree of the Sacred Roman Congregation of the City and the World, dated July 5, 1883, n. 1, it is established that the chapter, with the consent of the Ordinary, may recite the votive offices, those enumerated there, in the choir, in place of the weekday offices.

[*Latin ed. p. 378*]

378 APPENDIX V. lium. It is inquired whether any member of the Chapter, legitimately absent from the choir, may privately recite the votive or feria office at will? Doubt VIII. To which rites do the votive offices mentioned above belong? Doubt IX. Are Masses to be celebrated in response to the votive offices, according to the days, to be celebrated in the manner of votive celebrations, that is, without the Gloria (except for those of the Immaculate Conception of the Blessed Virgin Mary and of the Angels), and without the Creed, with "Benedictus Dominus," or in the manner of festive celebrations with the Gloria, the Creed, and "Ite Missa est"? Doubt X. In the recitation of the votive offices, the rubric itself cautions that the readings of the first nocturn are to be taken from Scripture. What is to be done on the weekdays of Lent, the Four Seasons, and Vigils, when, due to a lack of readings from Scripture, only a Homily is indicated? And the same Holy Congregation, after hearing the report of the undersigned Secretary, and after hearing the opinion of another, duly considered by all the Masters of the Ceremonies of the Apostolic See, judged it fitting to respond as follows: To 1. A feast, provided that, according to the change in the general rubric of the Roman Breviary concerning the translation of feasts, it can be transferred, must be completely restored to the first day, unless it is a feast of double or semi-double rank. To 2. The general rubric of the Breviary under the title X must be observed, and the decree in Milan, on December 7, 1743, to 3. (1) To 3. In the octave of a feast, if the readings, either of the second or third nocturn, are not available from the Most Holy See for a particular Church or Diocese, they must be taken from the Roman Octave and, if that is lacking, the readings of the feast day must be repeated. On the days within the octave, if the readings of the Roman Octave are lacking, the readings of the second nocturn for the second day will be from the Common I, for the third day from the same Common II, if they exist, otherwise from the feast day, and so alternately until the octave day. To 4. For the 21st of February for the Diocese of Alben, the feast of Saint Cyril of Alexandria is to be permanently assigned, and for some parishes of that diocese (1) MEDIOLANEN, doubt 3. Is the priority of time to be considered in the fixing of feasts, and not the superior rite? To 3. "In the fixing of feasts, it must be observed what is prescribed by rubric 10 of the Roman Breviary under number 7, concerning

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the translation of feasts, namely, that first the feast of double rank is to be celebrated, then the feast of semi-double rank, and among several feasts of double rank, that which is more solemn is always to be celebrated first, whether by rite or by the greater dignity of the solemnity; otherwise, if they are completely equal, one is to be placed before the other in the order in which they were to be celebrated on their proper days; the same principle applies to the fixing of feasts, as is demonstrated in the translation." And so on. December 7, 1743.

[*Latin ed. p. 379*]

On the twenty-eighth day of that month, it was decreed that, provided the feasts celebrated in those parishes on the twenty-first and twenty-sixth days of the aforementioned month are of at least a lesser rank, so that the laws are most strictly observed. Regarding V. To be read: "Where the future victim shall be." Regarding VI. This manner of acting is by no means to be tolerated, and the thurifers in the solemn Mass should depart from the altar according to the rubrics of the Missal and the dispositions of the Ceremonial of Bishops. Regarding VII. Let the decree be given on the tenth of November, 1883. (1) Regarding VIII, IX, and X. Provision is made by the rubrics placed in the exemplar published by the Holy Roman Church, concerning the votive offices and the responses of the Masses. And thus it was written and declared. On the twelfth of February, 1884. PALENTINA The Master of Sacred Ceremonies of the Diocese of Palencia humbly requested a declaration from the Holy Roman Congregation regarding the following doubts: Doubt I. Having once granted the entire Diocese the privilege of using the color blue in all churches, both on the Feast and during the Octave of the Immaculate Conception of the Blessed Virgin Mary, as well as on all Sabbaths, on which her votive office is performed, v. 379, or as often as it is said in the same votive Mass, can the color white or blue be used at will? Doubt II. Are the churches of nuns residing in the same Diocese, but using their own calendar, to be considered equal to other churches with regard to the aforementioned privilege? Doubt III. When the office of a simple feast is recited, must the Commemoration of the Cross be performed before the suffrage of the Saints, or common commemorations, both in the Vespers and in the Lauds? Doubt IV. In the Cathedral Church of Palencia, is the Commemoration of Saint Mary always performed, even if the small office is recited during the weekdays of Lent and the Sacred Advent, which seems to contradict the rubric of the Breviary; nevertheless, must such a custom be observed? The Sacred Congregation of Rites, after hearing the report of the undersigned Secretary, and having carefully considered these doubts with another of the Masters of Apostolic Ceremonies, judged it fitting to respond as follows: Regarding I. Negatively, but the color blue must be used. Regarding II. These churches require a special indult. Regarding III. Negatively, according to the rubrics. Regarding IV. The rubrics must be

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observed. And thus it was declared and written. On the twelfth of February, 1884. (1) This decree has already been reported, as mentioned on page 315 of this volume.

[*Latin ed. p. 380*]

380 APPENDIX V. In Naples, that all things may be done with order in ecclesiastical functions, and that the correct method may be observed, the Sacred Consistory of the Neapolitan Church, with the approval of its Most Reverend Archbishop, humbly requested the Sacred Congregation of Rites to provide a clarification regarding the following questions:

Question I. The Roman Pontifical has, at the end of the title "Concerning the blessing and laying of the first stone for a church to be built," the following: "If the Bishop wishes, he prepares himself to celebrate Mass in the said place, in honor of the Saint in whose name the church is founded." The following is asked:

1. Are there any days on which such a Mass should be considered forbidden?

2. Should this Mass, whether sung or read, be celebrated with the rite of a solemn votive Mass for a grave matter, excluding all commemorations, or as a private votive Mass?

3. If the Bishop does not wish to celebrate such a Mass, can another priest celebrate it?

Question II. The Roman Ritual, in the title "Rites for blessing a new church," prescribes that, after the blessing, a Mass should be celebrated, either of the season or of a Saint. The following is asked:

1. Of which Saint should this Mass be celebrated, that is, of the Saint occurring in the liturgical calendar, or of the Saint in whose honor the church is dedicated?

2. Regarding the first part of the question, should the answer be negative; regarding the second part, should the answer be affirmative, with what rite should it be celebrated, as in the second question of the preceding doubt?

Question III. After the consecration of a church or altar, as prescribed in the Roman Pontifical, a Mass is to be celebrated "as is noted in the Missal, 'on the very day of the dedication of the church or altar.'" The following is asked:

1. In this Mass, whether it is celebrated for the consecration of a church or an altar, should those commemorations be made which are not to be omitted even in the first class of Duplex feasts, such as those of the Sunday, of a privileged Feria, etc.?

2. Is it permissible to celebrate such a Mass in both cases mentioned, on all days of the year, with no exception?

3. If certain days are excepted, should at least the Commemoration of the Dedication be made in the Mass of the day?

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Question IV. If there is a grave and urgent necessity, and no special Mass is noted in the Missal for it, but only a Collect, for example, for obtaining rain, for requesting fair weather, etc.; if, in such circumstances, the Bishop wished to celebrate a solemn Mass for a grave matter, which Mass should he celebrate? And if this Mass were for any necessity, would it be necessary to remove the Collect of the Mass itself for any necessity, and substitute it with the Collect of the particular necessity that is pressing; or, retaining the former, should one add the latter under a single conclusion?

[*Latin ed. p. 381*]

IX. Question V. Regarding the Sacred Roman Council. On March 12, 1678, in Mexicana, the first decree was issued, stating that Masses proper to the feasts of the Blessed Virgin Mary cannot be celebrated as votive Masses. The question is: 1. Does this prohibition include even the Mass of the Immaculate Conception, which is commonly celebrated? The reason for this doubt arises because, after the Introit of the aforementioned Mass, variations are found in the Introit itself, depending on the time of year, with the preceding words, "in Masses votive." 2. Are Masses celebrated under various titles of the Blessed Virgin Mary, such as Mount Carmel, the Most Holy Rosary, Good Counsel, Help of Christians, Purity, etc., included in this rule, so that they can never be celebrated as votive Masses, except on the days of the Octave, if they have one? 3. Also, can the Mass of the Most Sacred Heart of Jesus, "Miserere," be celebrated as a votive Mass?

Question VI. In this our city of Naples, it is not forbidden to bring corpses to the Church, but custom dictates that scarcely anyone dies without the corpse being exposed in their own home, and, most often, it is brought to the Church in the evening of the following day, where, after the necessary rites are performed, it is transferred to the cemetery outside the city walls at the same evening hour. Consequently, it rarely happens that what the Rubric of the Roman Ritual desires and suggests, namely, that 38, a corpse should not be delivered to the tomb without a Mass being said in its presence, is observed. Given this custom, which is very difficult to eradicate, the question is: 1. Is it permissible to celebrate a sung Mass in any church whatsoever, on certain days determined in the Decree of Florence of April 23, 1781, namely, even on days of precept and on days of the second class, during the morning hours, while the corpse remains exposed in its own home? 2. If the answer is affirmative, are those who are exempt from the second class also included in the days on which such a Mass is prohibited, according to the rule established by Aloysius Gardellini in the Decree of April 20, 1832, in Derthonen, ad 3, and in the Instruction of Clement, § XII, n. 8 and 11?

Question VII. The Sacred Ritual Congregation, by Decree of March 1862, in Palma de Mallorca, in the second part, decreed: "Regarding the celebration of a Mass for the Dead on days that are not restricted, on the 3rd,

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7th, and 30th, it is not required that the deceased have so ordered it in their will, but the will of relatives, friends, or the executors of the will is sufficient." The question is: 1. Do the words "days that are not restricted" include even the feast day of the higher class? 2. If the answer is affirmative, is it permissible to...?

[*Latin ed. p. 382*]

APPENDIX V. 382. Can this decision also be maintained, or even be excluded? For example, if the deposition [of relics] is made on the day preceding the anniversary of the funeral, at the beginning of the month, and if the living desire the purification [of the tomb] to be performed not later than the third day after the deposition, will the third day be the fourth or the third day of the month? Doubt VIII. Regarding the months of the Sacred Roman Church. Doubt XI. Because of humidity, stones which lined the *Resarium* [reliquary] for the deceased were removed, and, having been cemented with new lime, it was doubted whether these altars required a new consecration. The doubt was presented to the Sacred Roman Congregation on September 25, 1875. The response was: "If the tomb is not open, but is only reinforced with new cement, the answer is negative; otherwise, affirmative." Now, Doubt IX. By Decree of the Sacred Roman Congregation of December 3, 1701, it was established that anniversaries of the deceased which fall on privileged Octaves, if they must be transferred after said Octaves, lose the privilege so that they may be celebrated with greater solemnity. The question is: 1. If these anniversaries cannot be celebrated with greater solemnity, can they at least be celebrated with lesser solemnity? 2. To the extent that the answer is affirmative regarding the first part, does this also apply to those anniversaries which, when they fall within the greater week, are to be celebrated after the Octave of Easter? Doubt X. In determining the days of the 3rd, 7th, and 30th, whether such days can be counted from the day of death or from the day of deposition, the question is asked: must the day of death or the day of deposition be included? Can this decision also be maintained if the entire altar, consecrated according to the fixed manner, is raised from its foundations, not entirely removed, and the foundations themselves are reinforced and joined with new cement? Doubt XII. The Roman Pontifical and the Ceremonial of Bishops include among the days on which the Most Reverend Archbishop may use the Pallium, "the principal feasts of his Church." The question is: 1. Are the centennial feast of a Saint, the solemn coronation of an image of the Blessed Virgin Mary, or other similar feasts celebrated with extraordinary solemnity, whether in the Metropolitan Church or in the churches of his Archdiocese, included among the principal feasts of his Church?

[*Latin ed. p. 383*]

APPENDIX V. 2. If the Most Reverend Archbishop, by special grace, is

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to impart the Papal blessing on a day when he cannot use the Pallium in the Mass, should he, after the Mass, put on the Pallium for this one reason, so that the aforementioned blessing may be imparted?

ADDITIONAL DOUBTS:

Doubt XIII. Can the Archbishop, on those days when he is permitted to use the Pallium, dismiss the Pallium after the Pontifical Mass, and put on other Pontifical vestments, such as the cope, and thus vested, impart the Papal blessing?

Doubt XIV. After the choral office has been completed, even the Hour of None having been recited, can the Hour of Thirds be sung again, when the Archbishop puts on the Pontifical vestments to celebrate?

Furthermore, the Sacred Congregation of Rites, having heard the report of the undersigned Secretary, as well as the opinion of the Most Reverend Assessor of the Sacred Congregation itself, after mature consideration of these doubts, has decided as follows:

Regarding I: Concerning the first, affirmatively, namely, on more solemn days within the year; concerning the second, affirmatively for the first part, negatively for the second part; concerning the third, affirmatively.

Regarding II: Concerning the first, negatively for the first part, affirmatively for the second part; concerning the second, as on the first day, at 2.

Regarding III: Concerning the first, negatively; concerning the second, negatively, according to the rubrics and decrees; concerning the third, affirmatively, under a single conclusion.

Regarding IV: Concerning the first, in this case, a Mass would have to be said for whatever necessity; concerning the second, negatively for the first part, affirmatively for the second part.

Regarding V: Concerning the first, negatively; concerning the second, affirmatively; concerning the third, affirmatively, according to the decrees in Mechlin, on September 1, 1838, at 3 (1), and in Camerano, on September 11, 1805, at 5.

(1) MECHLIN. Practice III. By a decree given for the Diocese of Mechlin on August 23, 1809, the faculty was granted to celebrate the Feast of the Most Sacred Heart of Jesus on the Sunday immediately following the Octave of the Solemnity of the Most Holy Body of Christ, with the proper Office and Mass, on May 11, 1765, for the Kingdom of Poland and for the Archiconfraternity established in the City, with approvals.

However, in that Mass, whose Introit is "Miseretatur ergo Dominus de populo suo" (The Lord have mercy on His people), Psalm 130, no Tract is assigned for votive Masses after Easter, nor is the Alleluia sung with the proper "f." for the Paschal season; hence, the question arises as to what should be done in this case, when some wish to say a votive Mass for the

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Most Holy Sacrament, and others for the Passion of the Lord?

The Sacred Congregation of Rites, convened on the aforementioned day at the Quirinal Palace with Ordinaries in attendance, having heard the report made by the undersigned Secretary, after mature deliberation, decided as follows:

Regarding 3. "That the Tract and Gradual after Easter, and the Alleluia with the proper 'f.' for the Paschal season, can be omitted from the other Mass already approved."

September 1, 1838.

[*Latin ed. p. 384*]

384 RESPONSIONES: Ad VI. Dilata. Ad VII. Quoad primum, affirmative; quoad secundum, provisum in praecedenti: Ad VIII. Affirmative. Ad IX. Quoad primum, affirmative; quoad secundum, provisum in praecedenti. Ad X. Utrumque servari posse iuxta Ecclesiae consuetudinem. Ad XI. Negative. Ad XII. Quoad primum, servetur Caeremoniale Episcoporum; quoad secundum, negative. AD DUBIA ADDITIONALIA Ad XIII. Negative, et hic usus servatus in Ecclesia Metropolitana videtur eliminandus, quia Benedictio Summi Pontificis nomine impertienda dari debet, absoluta Missa Pontificali a Celebrante, induto iisdem paramentis, reassumptis etiam chirothecis, et Pallio ornato, quippe actionem exercet plenitudinis Pontificalis dignitatis. Ad XIV. Negative. Et quatenus Canonicis non placeat recitare Sextam et Nonam, post Missam Pontificalem, Beneficiarii Ecclesiae Metropolitanae recitent privatim easdem duas Horas in Ecclesia Sanctae Restitutae. Atque ita rescripsit, declaravit ac servari mandavit. Die 23 Februarii 1884. [X

[*Latin ed. p. 385*]

385 Encyclical Letters of the Most Holy Pope Leo XIII concerning the principal duties of Christian citizens. LEO XIII, Pope. To the Venerable Brothers, Greetings and Apostolic Benediction. It becomes ever more apparent that the precepts of Christian wisdom must be recalled, and that life, morals, and the institutions of peoples must be profoundly conformed to them. For when these are neglected, such great evils result that no wise person can bear their present reality without great concern, nor can they look to the future without fear. — Indeed, there has been a considerable advance in those things which are good for the body and external matters; but every aspect of nature that affects human senses, and the possession of goods, resources, and powers, if it can increase the comforts and pleasures of life, cannot fill the soul with greater or more magnificent things. To look upon God, and to strive towards Him, is the supreme law of human life: for men, created in His image and likeness, are by their very nature strongly drawn to their Creator. But this striving towards God is not accomplished by some movement or course of the body, but by the things of the mind, by knowl-

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edge and affection. For God is the first and supreme truth, and the mind is nourished only by truth; He is also perfect holiness and the supreme good, towards which alone the will can aspire and approach, guided by virtue. And what is true of individual men is also to be understood of society, both domestic and civil. For nature did not create society for its own sake, so that man should pursue it as an end, but so that in it and through it, he might find aids suited to his perfection. Therefore, if a state pursues nothing beyond external comforts and the cultivation of life with elegance and abundance, if it neglects God in the administration of the republic, and is accustomed to disregard moral laws, it deviates greatly from its purpose and from the prescription of nature, and such a society of men and community is not to be considered a true society, but a deceptive imitation and simulation of society. — Indeed, we observe that those things which we have said, namely, the goods of the mind, which are most clearly found in the cultivation of true religion and in the observance of the precepts of Christians, are daily obscured by the forgetfulness or aversion of men, so that, as far as their actions are concerned...

[*Latin ed. p. 386*]

386 The greater the advancements that affect the body, the more the advancements that affect the soul seem diminished. The very significant weakening and diminution of the Christian faith is evident in those very injuries that are so often inflicted upon the Catholic name, injuries which the passage of time could never have tolerated. — It is beyond belief to say how many people are placed in danger of eternal salvation because of these things; but even the states and empires themselves cannot long remain healthy, because when Christian institutions and morals decline, the very foundations of human society must crumble. Only the force of coercion remains to maintain public tranquility and order; but this force is very weak when the support of religion is removed; and it is more suited to servitude than to obedience, and it contains within itself the seeds of great disturbances. The world has witnessed grave events, and it is not entirely clear whether they are equal in magnitude. — Therefore, the very times demand that we seek remedies, namely, that we restore the Christian way of thinking and acting in private life, and in all parts of the republic; for this is the most suitable means of eliminating the evils that oppress us, and of preventing the dangers that threaten us. It is our duty, Venerable Brothers, to strive for this, to try with the greatest effort and diligence; and for this reason, although we have presented similar things in other writings when the opportunity arose, we believe it is useful to describe more clearly in these writings the duties of Catholics; duties which, if faithfully observed, are wonderfully beneficial to the common good. We are embroiled in a fierce and almost daily struggle concerning the most important matters; in which it is difficult not to be deceived at times, not to err, and not to give

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way to despair. It is our duty, Venerable Brothers, to admonish each one, to teach, to encourage, in accordance with the times, so that no one may abandon the path of truth. There can be no doubt that Catholics have more and greater duties to perform than those who are either poorly disposed towards the Catholic faith, or are entirely ignorant of it. When Jesus Christ, having already obtained salvation for the human race, commanded the Apostles to preach the Gospel to every creature, He likewise imposed this duty upon all men, to learn and believe what is taught to them; and this duty is entirely connected with the attainment of eternal salvation. He who believes and is baptized shall be saved: but who is he that believes?

[*Latin ed. p. 387*]

LETTER 387: He who believes this will be condemned (1). But a man, having embraced the Christian faith as he ought, by this very fact submits himself to the Church, from which he is born, and becomes a most holy and equitable participant in its greatest society, which, with supreme authority, is the proper duty of the Roman Pontiff, under the invisible head, Christ Jesus.

Now, indeed, if we are commanded by the law of nature to love and defend the state in which we were born and raised, even to the point that a good citizen does not hesitate to risk his life for his country, it is a far greater duty for Christians to be always devoted to the Church. For the Church is the holy city of the living God, born of God Himself, and established by the same Author: which, although it wanders in the earth, calls men, instructs them, and leads them to eternal happiness in the heavens. Therefore, the fatherland must be cherished, from which we have received the use of our mortal life; but it is necessary to surpass it in charity with the Church, to which we owe the perpetual life of our soul: for the goods of the soul must be preferred to the goods of the body, and, moreover, duties towards God are far more sacred than those towards men.

Furthermore, if we truly wish to judge, the supernatural love of the Church and the natural love of the fatherland are twin charities that spring from the same eternal principle, since God Himself is the Author and cause of both: from which it follows that one duty cannot fight against the other. Indeed, we can and must love ourselves, be benevolent to our neighbors, love the republic and the power that governs it; and at the same time, we can worship the Church as a mother, and embrace God with the greatest charity possible.

Nevertheless, the order of these duties is sometimes perverted, either by the misfortunes of the times or by the more unjust will of men. Indeed, there are causes in which it seems that the republic demands one thing from citizens, and the religion another from Christians: and this happens not without reason, since the rulers of the republic either do not consider the sacred power of the Church, or they wish the Church to be subject to

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them. Hence arises a conflict, and a place of danger for virtue in the conflict. For two powers urge [us]: and since they command contrary things, it is impossible to obey both at the same time: "No one can serve two masters," (2) so that, indeed, if one duty is observed, the other must necessarily be neglected. But who should be given precedence, no one should doubt.

(1) John 16:16.

(2) Matthew 6:24.

[*Latin ed. p. 388*]

388 LETTERS — It is indeed a crime to deviate from obedience to God, to satisfy men; it is an abomination to break the laws of Jesus Christ, so that obedience may be rendered to magistrates, or, under the guise of preserving civil law, to violate the rights of the Church. It is necessary to obey God more than men (1). And just as Peter and the other Apostles were accustomed to respond in the same way to magistrates who did not give honorable commands, so too must the same be answered without hesitation in similar cases. No citizen, whether in peace or war, is better than the Christian who remembers his duty; but rather, he ought to endure all things, and even prefer death, rather than abandon the cause of God or the Church. — Therefore, those who condemn this constancy in the choice of duty, and claim that it pertains to sedition, do not have the true nature and force of laws. This is a matter well known and which We have explained on several occasions. There is no law unless it is the command of right reason, promulgated by a legitimate authority for the common good. But true and legitimate authority is none other than that which proceeds from God, the supreme Prince and Lord of all, who alone can command man over men: nor is right reason to be considered that which contradicts truth and divine reason; nor is true good that which is contrary to the supreme and immutable good, or which draws men away from the love of God. — Therefore, it is right for Christians to show reverence to public authority, in which they recognize, even when exercised by an unworthy person, a certain semblance and image of divine majesty; this reverence is due to the laws, not because of force and threats, but because of the consciousness of duty: for God has not given us a spirit of fear (2). But if the laws of the republic openly contradict divine law, if they inflict injury upon the Church, or if they are contrary to those things which pertain to religion, or if they violate the authority of Jesus Christ in the Supreme Pontiff, then it is the duty to resist, and to obey is a crime; and this, moreover, is an injury to the republic itself, because whatever is done amiss in religion is a sin against the republic. — Again, it becomes clear how unjust is the accusation of sedition: for it is not the obedience due to the prince and the lawmakers that is cast aside; but rather, it is a departure from their will, only in those precepts which they have no power to issue, because they are promulgated against God, and are therefore void of justice, and are anything rather than

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laws. — You know, Venerable Brothers, that this is the very doctrine of the blessed Apostle Paul (1). (1) Acts v, 29. (2) II Timothy i, 7.

[*Latin ed. p. 389*]

LETTER 389. Having written to Titus, exhorting Christians to be subject to rulers and authorities, and to obey them, he immediately adds that they ought to be prepared for every good work (1): thereby making it clear that if the laws of men should prescribe anything contrary to the eternal law of God, it is not right to obey. In a similar manner, the Prince of the Apostles, to those who wished to deprive him of the liberty of preaching the Gospel, responded with courage and loftiness of spirit: "Judge whether it is right in the sight of God to obey you rather than God; for we cannot but speak of what we have seen and heard" (2). Therefore, to love both homelands, one by nature and the other by the heavenly city, but to hold the love for the latter in greater esteem, and never to place human rights before the rights of God, is the greatest duty of Christians, and also a kind of source from which other duties spring forth. Indeed, the Redeemer of the human race said of Himself: "For this was I born, and for this I came into the world, that I might bear witness to the truth" (3). Similarly, He said: "I came to cast fire upon the earth, and what do I desire, if not that it be kindled?" (4). In this knowledge of truth, which is the highest perfection of the mind, and in divine charity, which in turn perfects the will, lies the life and liberty of all Christians. These things, namely, truth and charity, the most noble inheritance entrusted to them by Jesus Christ, are perpetually preserved and protected by the Church with diligent care. But how much hostility has been directed against the Church, and how many are the attacks, it is scarcely fitting to mention here. Just as reason has enabled many men to discover hidden things and those concealed by nature through the investigation of knowledge, and to apply them appropriately to the uses of life, so these men have taken such great strides that they now believe they can banish divine power and dominion from common life. Deceived by this error, they transfer to human nature the principality that was stolen from God: they proclaim that all true principles and norms are to be sought from nature; that everything should flow from it, and that all the duties of religion should be referred to it. Therefore, they deny that anything is divinely revealed; that Christian morals are to be obeyed, nor that the Church is to be obeyed; that no laws are to be enacted by it, no rights are to be established; indeed, that no power is to be given to the Church in the institutions of the republic.

(1) Titus 3:1.

(2) Acts 4:19, 20.

(3) John 18:37.

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(4) Luke 12:49.

[*Latin ed. p. 390*]

390 Letters [of instruction] are necessary. They truly desire, and strive with all their might, to seize control of public affairs and to sit in the governing seats of nations, so that it may be easier for them to direct laws and to shape the morals of the people. Thus, the Catholic name is either openly sought after, or secretly attacked; and a great license is permitted to all kinds of perversity, so that the public profession of the Christian truth is often constrained by many bonds. Therefore, in these circumstances, which are so unjust, everyone must first of all consider themselves, and strive with all their might to safeguard the faith, which is firmly held in their minds, being wary of dangers, and especially being always armed against various deceptive sophisms. For the sake of its safety, we also judge it to be very useful, and highly appropriate for these times, to diligently strive, as far as one's ability and capacity allows, to place one's study in Christian doctrine, and to imbue the mind with a greater knowledge of those things which contain religion, and to acquire, as far as reason permits, a fuller understanding of them. And since faith must not only remain pure and incorrupt in the minds, but must also be increased by constant growth, it is often necessary to implore God with humble supplication, as the Apostles did, saying: "Increase our faith" (1). But in this very matter, which concerns the Christian faith, there are other duties which, if observed with care and piety, have always served the cause of salvation, and which are of the greatest importance in our time. For in this, which we have said, such widespread and deeply rooted madness of opinions exists, it is certainly the duty of the Church to defend the truth, and to remove errors from the minds of men, and this must be preserved holily at all times, because the honor of God, and the salvation of men, are in its care. But, indeed, when necessity demands, not only those who are in authority should defend the safety of the faith, but everyone is bound to spread their own faith to others, either for the instruction of other faithful, or for the confirmation of their own faith, or to repress the insults of the unfaithful (2). To yield to the enemy, or to suppress the voice, when so much clamor is being stifled against the truth, which is being oppressed on all sides, is either the act of a slothful person, or of one who doubts whether the things they profess are true. Both are shameful, and injurious to God; both are contrary to the salvation of both individuals and the community; and both are profitable only to the enemies of the faith, because the greater the negligence of the righteous, the more the boldness of the wicked increases.

(1) Luke 18:5.

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(2) St. Thomas, II-II, Question 3, Article 2, ad 2.

[*Latin ed. p. 391*]

LETTERS 391: It is possible, because false accusations are refuted, and bad opinions are disproven, with little effort, and often with greater effort. Finally, no one is forbidden to employ it and to present before them the fortitude which is proper to Christians: by which, indeed, the spirits and plans of adversaries are often broken. Furthermore, Christians are born for combat; and the greater the power of this combat, the more certain, with God's help, is the victory. Be confident: I have said these things to you, that in me you may have peace. (1) And there is nothing that anyone can oppose to the argument that Jesus Christ, the preserver and avenger of the Church, does not need the works of men. For it is not a lack of power, but the greatness of His goodness, that He desires that something be contributed by us, in order to obtain and acquire the fruits of salvation, which He Himself has brought forth. The first parts of this office are to openly and constantly profess the Catholic doctrine, and to spread it, as far as each one can. For, as is often and truly said, nothing hinders Christian wisdom so much as not being known. When rightly perceived, it has power in itself to dispel errors; and if the mind grasps it simply, and not bound by preconceived and prejudiced opinions, reason declares that it must be assented to. Now, the virtue of faith is a great work of divine grace and goodness; but the very things to which faith is to be applied are known almost in no other way than by hearing. How can they believe in Him, whom they have not heard? And how can they hear without a preacher? (2) Therefore, faith is by hearing, and hearing is by the word of Christ (3). Since, therefore, faith is necessary for salvation, it necessarily follows that the word of Christ must be preached. Indeed, the office of preaching, that is, teaching, belongs by divine right to the teachers, whom the Holy Spirit has placed to govern the Church of God (4), and especially to the Roman Pontiff, the vicar of Jesus Christ, who is placed over the entire Church with supreme power, and is the master of those who are to believe and act. Nevertheless, let no one think that those who are private individuals are forbidden to put forth some effort in this matter, especially those to whom God has given the ability of mind with a desire to do good: who, whenever the occasion demands, can conveniently, not indeed assume the parts of a doctor, but can impart to others what they have received, echoing the voice of the teachers, as it were, an image.

(1) John 16:33.

(2) Romans 10:14, 17.

(3) Acts 20:28.

[*Latin ed. p. 392*]

392 The works of private individuals, it is seen, were so opportune and

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fruitful for the Fathers of the Council of Vatican, that they judged that all the faithful, especially those who hold authority or exercise the teaching office, should, under the bonds of Jesus Christ, devote themselves to these matters, and we, by the authority of the same God and our Savior, command them to devote study and effort to defending and eliminating these errors, and to spreading the light of the purest faith (1). — Moreover, let everyone remember that they can and should preach the Catholic faith with the authority of example and the constancy of profession. — Therefore, in the duties that bind us to God and the Church, it must be considered above all that each individual, as far as possible, should strive in the propagation of the Christian truth and the refutation of errors, with diligence. But these duties will not be fulfilled in a proper and useful manner if individuals descend into the arena separately from one another. — Jesus Christ foretold that just as He Himself first endured offense and reproach, so too the work instituted by Him would incur the same, so that many, indeed, would be prevented from attaining salvation through His grace. Therefore, He did not merely wish to instruct His disciples in His doctrine, but also to unite them in a society, and to gather them into one body, which is the Church (2), of which He Himself would be the head, and to perfectly coalesce it. May the life of Jesus Christ permeate the entire body, nourishing and sustaining each member, and holding them together, united to Him, towards the same end, even though the actions of individuals may not be the same (3). For these reasons, the Church is not only a perfect society, and far superior to any other society, but it has been granted by its Author the duty of striving for the salvation of the human race, like an ordered army (4). This composition and conformation of the Christian thing cannot be changed in any way: nor is it permitted to anyone to live according to their own judgment, or to pursue a method of warfare that pleases them, because he scatters, rather than gathers, who does not gather with the Church and with Jesus Christ.

(1) Const. *Dei Filius*, sub fin.

(2) Colossians 1:24.

(3) For as in one body there are many members, not all of them are the same: so in one body are many members, each of whom is a member of one another. Romans 12:4, 5.

(4) Song of Songs 6:9. We are members of the body of Christ, each in their own way.

[*Latin ed. p. 393*]

Letter 393, and indeed those who contend not with him [Christ] and with the Church contend against God (1). For this union of minds and similarity of action, which is dreaded by the enemies of the Catholic name, the first and foremost thing necessary is concord of opinions; and we see Paul the Apostle urging the Corinthians with vehement zeal and singu-

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lar gravity: "Now I beseech you, brethren, by the name of our Lord Jesus Christ, that you all speak the same thing and that there be no schisms among you: but that you be perfect in the same mind and in the same judgment" (2).

The wisdom of this precept is easily understood. For the mind is the principle of action; therefore, wills cannot agree, nor can actions be similar, if minds hold different opinions. Those who follow only reason as their guide can scarcely, if at all, have a single doctrine among them: for the art of knowing things is difficult; and the mind is both weak by nature, and distracted by the variety of opinions, and is often deceived by external influences; moreover, desires often obscure or certainly diminish the ability to see the truth. For this reason, in governing states, it is often necessary to use force to keep together those whose minds are discordant.

But it is quite different with Christians: what they ought to believe, they receive from the Church, whose authority and guidance they are certain lead them to the truth. Therefore, just as the Church is one, because there is one Jesus Christ, so too the doctrine of all Christians throughout the world must be one, and ought to be one. One Lord, one faith (3). Having the same spirit of faith (4), they obtain a salutary principle, from which the same will in all things, and the same reason for acting, spontaneously arise. But, as the Apostle Paul commands, this unanimity must be perfect.

Since Christian faith is founded not on human, but on divine authority, we believe that what we have received from God is true, not because of the intrinsic truth of things perceived by the light of natural reason, but because of the authority of God himself, who reveals, and who cannot be deceived, nor can deceive (5).

(1) Qui non est mecum, contra me est: et qui non Luc. xi, 23. (2) I Corinth. i, 10. (3) Ephes, iv, 5. (4) II Corinth. iv, 13. (5) Conc. Vat. Const. Dei Films, cap. 3. colligit mecum, dispergit.

[*Latin ed. p. 394*]

LITTERAE 394, which states that, whatever matters are established as having been handed down from God, it is absolutely necessary to receive them individually with equal and like assent; for to deny any one of these things is to undermine the faith itself, since those who either deny that God has spoken to men, or who doubt the infinite truth and wisdom of God, overturn the very foundation of faith. – It is the duty of the teaching Church to determine what are the doctrines divinely revealed, to which God has entrusted the custody and interpretation of His words. And the highest authority in the Church is the Roman Pontiff. Therefore, just as the harmony of minds requires a perfect agreement in one faith, so too it demands that wills be perfectly subject to and obedient to the Church and to the Roman Pontiff, as to God. – This obedience must be perfect, because it is commanded by faith itself, and it has this in common with faith, that

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it cannot be divided: indeed, if it is not absolute and complete, only a semblance of obedience remains, while its true nature is taken away. Christian custom grants such perfection only to those who, as a mark of recognizing Catholics, always possess and maintain it. This passage is eloquently explained by Thomas Aquinas with these words: "The formal object of faith is the first truth, according to how it is manifested in the sacred Scriptures, and in the doctrine of the Church, which proceeds from that first truth. Therefore, whoever does not adhere, as to an infallible and divine rule, to the doctrine of the Church, which proceeds from the first truth manifested in the sacred Scriptures, does not have the habit of faith; but he holds those things that are of faith in a different way than through faith." It is evident that he who adheres to the doctrines of the Church as to an infallible rule, assents to all that the Church teaches; otherwise, if he holds some of the things that the Church teaches, and does not hold others, he is no longer adhering to the doctrine of the Church as to an infallible rule, but to his own will (1). The faith of the entire Church must be one, according to the words (1 Corinthians 1): "All are of one mind, and there are no schisms among you," which cannot be maintained unless the question of faith, having arisen, is determined by him who presides over the entire Church, so that his judgment may be firmly held by the entire Church. And therefore, the new edition of the Creed, as well as all other matters pertaining to the entire Church, belong solely to the authority of the Supreme Pontiff (2). (1) II-II, Question 5, Article 3. (2) Ibid., Question 1, Article 10.

[*Latin ed. p. 395*]

LETTERS 395. In establishing the boundaries of obedience, let no one believe that obedience to the authority of the sacred pastors, and especially of the Roman Pontiff, is required only in those matters which pertain to dogmas, the repudiation of which cannot be separated from the stain of heresy. Indeed, it is not enough simply to sincerely and firmly assent to those doctrines which the Church, although not solemnly defined by judgment, presents as to be believed with divine revelation through its ordinary and universal magisterium: doctrines which the Council of Vatican decreed are to be believed by the Catholic faith and as divine. But furthermore, it must be understood that Christians are to submit to and allow themselves to be governed by the power and guidance of bishops, and especially of the Apostolic See. How readily this is apparent. For those things which are contained in divine oracles touch upon God, upon man himself, and upon those things necessary for man's eternal salvation. Indeed, both kinds of things, namely, what one ought to believe and what one ought to do, are prescribed by divine law by the Church, as we have said, and by the Supreme Pontiff within the Church. Therefore, the Pontiff must judge, by his authority, what the divine words contain, which doctrines are in agreement with them, and which are in disagreement; and in the same way, he

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must demonstrate what is honorable, what is dishonorable; what must be done, what must be avoided, for the sake of attaining salvation; otherwise, he could not be a certain interpreter of the words of God, nor a safe guide for men in living. Furthermore, one must delve deeper into the nature of the Church: for it is not a mere association of Christians, as chance might have it, but a society divinely established with an excellent order, which directs itself directly and closely towards that which brings peace to souls and sanctity; and since it possesses, by divine appointment, the things necessary for this purpose, it has certain laws, certain offices, and follows a method in governing the Christian people that is in accordance with its nature. — But such a government is difficult and is often a source of offense. For the Church governs the nations throughout all the regions of the earth, nations that are different in kind and in customs, and to whom it is the duty of both civil and sacred power to be subject, since they live in their own republics according to their own laws. These duties are found in the same persons, as we have said, and are not conflicting, nor are they confused, because one kind pertains to the prosperity of the state, the other to the common good of the Church, both being born of the desire for the perfection of men.

[*Latin ed. p. 396*]

396. Letters. Once the boundaries of rights and offices are established, it is entirely clear that the rulers of states are free to manage their affairs; and this not only without opposition, but even with the help of the Church, which, since it most strongly commands that piety, which is justice towards God, be observed, thereby calls to justice even towards rulers. But the sacred power extends to a far more noble purpose, namely, to govern the minds of men by defending the Kingdom of God and its justice (1), and in this it is entirely consumed. Indeed, without jeopardizing faith, it cannot be doubted that the task of governing souls has been assigned to the Church, and that there is nothing of local political power in it: for Jesus Christ entrusted the keys of the Kingdom of Heaven not to Caesar, but to Peter. — With this doctrine concerning political and religious matters, certain other considerations of no small importance are joined, which we do not wish to ignore in this place. The Christian republic differs greatly from every kind of political government. Although it may have a resemblance in its constitution to earthly kingdoms, its origin, cause, nature, are far different. — Therefore, it is right to live in accordance with the Church and to defend it, in accordance with the institutions and laws of one's own nature. And since the Church is not only a perfect society, but also superior to any human society, it strongly refuses to follow the interests of factions and to be bound by the changeable connections of civil affairs, which are its duty. Similarly, the Church, as a guardian of its own rights, and most attentive to those of others, does not consider it to be its concern which form of government is most pleasing to the citizens, by which institutions the civil affairs of Chris-

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tian nations are governed: from all kinds of republics, it approves of none that are not preserved with religion, morals, and discipline. — To this end, the thoughts and actions of each Christian should be directed. There is no doubt that there can be honest contention in the political sphere, provided that truth and justice are maintained, so that opinions and practices may prevail, which seem most conducive to the common good. But to draw the Church into factions, or to wish to help those with whom one is contending, is to abuse religion immoderately. On the contrary, religion must be sacred and inviolable among all; indeed, in the very discipline of states, which cannot be separated from the laws, morals, and duties of religion, this must always be the primary and perpetual concern: what is most advantageous to the Christian name; which, in some places, is in danger through the actions of adversaries. (1) Matthew 6:33.

[*Latin ed. p. 397*]

Letter 397: It is necessary to abstain from all discord, and with harmonious minds and counsels, to undertake the defense and protection of religion, which is the greatest common good, to which all things must be referred. — And we consider it necessary to explain this matter somewhat more accurately. Indeed, both the Church and the State have their own authority: therefore, in conducting their affairs, neither yields to the other, within the limits established by the proper sphere of each. However, this does not mean that they are separated in any way, let alone that they are in conflict. — For man is not only given life, but also reason. Therefore, man seeks that tranquility of public order, which the civil union most closely promotes, so that he may live well, and even more so, that he may receive sufficient support for perfecting his morals: and this perfection consists nowhere except in the knowledge and practice of virtue. At the same time, he wishes, and rightly so, to find assistance in the Church, through which he may perfectly fulfill his duty of piety: which is founded on the knowledge and practice of true religion, which is the queen of virtues, because, by leading men back to God, it completes and enriches all things. — Therefore, in establishing laws and institutions, the moral and religious nature of man must be considered, and the same perfection must be sought for him, but rightly and in order: and nothing should be commanded or forbidden except with due regard to what is intended for the civil society of men, and what is intended for the religious society. Indeed, the Church cannot be indifferent to the laws that prevail in the states, not insofar as they pertain to the republic, but because they sometimes transgress the boundaries due to the Church. Moreover, it is the duty of the Church to resist, if at times the discipline of the state is harmful to religion, and diligently to strive that the virtues of the Gospel may permeate the laws and institutions of the people. And since the fortune of the state depends primarily on the wisdom of those who govern the people, the Church cannot grant favor to

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those men, from whom she foresees that she will be attacked, who openly refuse to fear her rights, or who strive to separate what is sacred and what is civil, which are naturally associated. On the contrary, the Church must be a supporter of those who, believing what is right about both the civil and the Christian republic, are willing to work together for the common good. — These principles contain the norm that every Catholic must follow in public life. Namely, wherever a Catholic is involved in public affairs, he must favor those men who...

[*Latin ed. p. 398*]

398 Letters of apparent probity, and those deserving of merit in the Christian name: there can be no reason why those animated with malice towards religion should be permitted to take precedence. From this it is clear how great is the duty of defending the consensus of minds, especially at this time when the Christian name is so fiercely attacked by cunning schemes. Those who diligently strive to adhere to the Church, which is the pillar and firm foundation of truth, (1) will easily avoid false teachers... who promise them abundance, while themselves being servants of corruption; (2): nay, they will become participants in the very virtues of the Church, overcoming snares with wisdom and force. It is not the place here to inquire how much, and to what extent, the sluggishness and internal discord of Catholics have contributed to new things: but certainly, wicked men would have had less audacity, and would not have wrought such ruin, if a stronger faith had flourished in the minds of many, which works through charity (3), and if the Christian morals entrusted to us by divine discipline had not been so widely undermined. May past events serve to remind us, to benefit us, and to lead us to act more wisely in the future. But when approaching public affairs, there are two great vices that must be avoided, one of which assumes the name of prudence, the other is steeped in recklessness. Some, full of power and influence, openly resist what is necessary, lest they perhaps provoke hostile feelings through contention. These people, whether they stand for or against the Church, is uncertain: since they profess to uphold the Catholic doctrine, yet they would wish that certain opinions, differing from it, could be freely propagated, and the Church would allow it. They lament the decline of faith and the corruption of morals: yet they do not strive for a remedy, or even, through excessive indulgence or some pernicious pretense, they often increase the evil. They are eager to make it clear to no one that they are devoted to the Apostolic See: but they always have something to object to the Pope. The prudence of such people is of that kind which the Apostle Paul calls "the wisdom of the flesh, which is death to the soul," because it is not subject to the divine law, nor can it be subject to it (4). But nothing

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is more harmful to good (1 Timothy 1:13; 2 Peter 2:1-2; Galatians 5:6).

[*Latin ed. p. 399*]

LETTER 399, concerning matters that require foresight. For those who are enemies, and who, without hesitation, proclaim and boast of their intention, namely, to utterly destroy the Catholic religion, which is the only true religion, if it were possible. Such a scheme leaves them daring to attempt nothing. For they believe that the more the virtue of others is shaken, the more easily they will be able to accomplish evil deeds. Therefore, those who are hardened in the lusts of the flesh, and who pretend to be ignorant, ought to be good soldiers of Christ. Those who desire to obtain the rewards of victory by the easiest means and without engaging in combat, are not only far from hindering the path of evil, but rather they hasten its progress. On the other hand, many, moved by deceitful designs, or, which is even worse, acting one way and pretending another, do not assume their proper roles. They wish that things in the Church should be conducted according to their own judgment and will, to the point that they resent or reject anything that is done differently. These people, though engaged in futile contention, are no less deserving of blame than the others. For they do not follow legitimate authority, but rather they undermine it, and, with great disturbance to the order that God has perpetually established in His Church, and which He allows no one to violate with impunity, they seize upon the duties of magistrates for themselves. Those, however, who do not refuse to engage in the struggle whenever it is necessary, with this firm conviction, that unjust force will eventually cease, and that the sanctity of law and religion will prevail, are truly worthy of praise. They undertake what appears to be a worthy endeavor, as they strive to defend the religion against the most audacious faction, born of animosity towards the Christian name, which does not cease to seek to bring the Supreme Pontiff under its hostile power. But they diligently retain a spirit of obedience, and are not accustomed to take any action without permission. Indeed, since a similar willingness to obey, joined with a strong spirit and constancy, is necessary for all Christians, so that, whatever circumstances time may bring, they may not be found wanting (1), we greatly desire to instill this in the hearts of each individual, which Paul (2) calls the wisdom of the spirit. For this follows the best rule of moderation in human actions, and it makes a man neither despair timidly through cowardice, nor become too confident through recklessness. (1) James 1:4. (2) Romans 8:6.

[*Latin ed. p. 400*]

400 *LITTERAE* — There is a distinction between political prudence, which pertains to the common good, and that which pertains to the private good of each individual. The former is found in private individuals, who, by counsel and obedience to right reason, govern themselves; the

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latter, however, is found in those in authority, especially in rulers, whose duty it is to govern with power: and indeed, it may seem that the political prudence of private individuals consists entirely in faithfully executing the commands of legitimate authority (1). This order and arrangement ought to be all the more valued in the Christian republic, inasmuch as the political prudence of the Pontiff encompasses more things: for it is his duty not only to govern the Church, but also generally to order the actions of Christian citizens so that they may be suitably suited to the hope of attaining eternal salvation. From this it is clear that, besides the highest concord of opinions and actions, it is necessary to observe the wisdom of ecclesiastical power in acting. Indeed, the administration of the Christian commonwealth pertains most closely and according to the Roman Pontiff to the Bishops: who, although they do not reach the highest point of pontifical power, are nevertheless true princes in the ecclesiastical hierarchy; and since each administers individual churches, they are like the principal craftsmen... in the spiritual building (2), and have assistants in their duties, and Clerics as advisors. To this constitution of the Church, which no mortal man can change, life must be adapted. Therefore, just as it is necessary for Bishops to be joined with the Apostolic See in exercising their episcopate, so too it is fitting for laymen and clerics to live and act in the closest union with their Bishops. — Indeed, the Antistites themselves may sometimes have something either less laudable in their morals, or in their opinions, that is not probable: but no private individual should arrogate to himself the role of judge, which the Lord Christ has assigned to one alone, whom He has appointed as shepherd of the sheep. Let everyone remember that (1) Prudence is in reason; but to rule and govern is properly of reason; and therefore, everyone, in so far as he participates in government and administration, ought to have reason and prudence. It is evident, however, that subjects, in so far as they are subjects, and servants, in so far as they are servants, do not rule or govern, but rather are ruled and governed. And therefore, prudence is not the virtue of a servant, in so far as he is a servant, nor of a subject, in so far as he is a subject. But because every man, in so far as he is rational, participates in some way in government according to the judgment of reason, it is fitting for him to have prudence. Hence it is evident that prudence is in the ruler in the manner of the architectural art, as is said in VI Ethics; but in subjects, in the manner of the art of manual labor. St. Thomas, II-II, Quest. XLVII, art. xii. (2) St. Thomas, Quodlib. i, art. xiv.

[*Latin ed. p. 401*]

Litterae 40 of Gregory the Great express the following sentiment: Subjects ought to be admonished not to rashly judge the lives of their superiors, even if they perhaps see them acting in a reprehensible manner, lest, while rightly rebuking evil, they plunge deeper into pride. They ought

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to be admonished not to become more audacious against their superiors because of their faults, but rather, if there are grave faults, to judge them within themselves, so that, however, constrained by divine fear, they do not refuse to bear under them the yoke of reverence. Indeed, the actions of superiors are to be dealt with by the sword, and even when rightly rebuked, they are judged (1). However, these efforts will be of little avail unless the individual is trained in the discipline of Christian virtues. This is the sentiment of the sacred Scriptures concerning the lineage of the Jews: "And as long as they sinned not in the sight of their God, it was well with them: for their God hateth iniquity" (2). When they departed from the path that God had given them to walk in, they were destroyed in battles by many nations (2). Nevertheless, the nation of the Jews bore the nascent form of the Christian people, and in their ancient misfortunes, there was often an image of the future truth; except that divine goodness has greatly increased and adorned us with far greater benefits, and for that reason, the crime of ingratitude makes the sins of Christians much more grievous. The Church is never abandoned by God at any time or in any way; there is nothing that it fears from human wickedness; but truly, when nations degenerate from Christian virtue, it cannot be the same for them. For sin makes nations miserable (3). If all past ages have experienced the power and truth of this sentiment, what is the cause that ours does not experience it? Indeed, the deserved punishments are already pressing, many things declare it, and the very state of affairs confirms it; for we see that many states, indeed, afflicted by internal evils, are not safe in any respect. And if impious factions should boldly surpass the established order, it is to be feared that entire states, which were founded on nature, will be destroyed. And truly, such fears cannot be prevented by human effort alone, especially because a vast multitude, having rejected the Christian faith, (1) Reg. Pastor. P. III, cap. iv. (2) Judith v, 21, 22. (3) Proverbs xiv, 34.

[*Latin ed. p. 402*]

402 Letters rightly contend that pride suffers its just punishments because, blinded by its desires, it vainly seeks the truth, embraces falsehoods as truths, and believes itself wise when it calls evil good, and good evil, placing darkness for light, and light for darkness (1). Therefore, it is necessary that God intervene, and that He, mindful of His benevolence, regard the civil society of men. Wherefore, as we have strongly urged before, it must be pursued with singular zeal and constancy, that divine mercy may be implored with humble supplication, and that the virtues by which Christian life is accomplished may be restored. – Above all, charity must be awakened and fostered, for it contains the very foundation of Christian life, and without which either no virtues exist at all, or they are devoid of fruit. Therefore, the blessed Paul, exhorting the Colossians to avoid every vice and to seek the praise of virtues, adds this: "And above all these things,

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have charity, which is the bond of perfection" (2). Truly, charity is the bond of perfection, because those who are embraced by it are intimately united with God Himself, and are perfected so that they may draw life for their souls from God, act with God, and refer all things to God. Charity must indeed be associated with the love of God and the love of one's neighbor, because men participate in the infinite goodness of God, and they bear in themselves the expressed image and form of Him. We have this commandment from God, that he who loves God, loves also his brother (3). If anyone says, "I love God," and hates his brother, he is a liar (4). And this divine commandment concerning charity was given a new name by its author, not because loving one another had not already been commanded by some law, or even by nature itself, but because this Christian manner of loving was entirely new and unheard of in all times. For it is with this charity that Jesus Christ is loved by His Father, and that He Himself loves men, and He obtained this same charity for His disciples and followers, that they might be one heart and one soul in Him, just as He and the Father are one in nature. No one is ignorant of the power of this precept, how deeply it has descended into the hearts of Christians from the beginning, and what concord, mutual benevolence, piety, patience, and fortitude it has brought forth. Let works be given as examples by imitating the ancients! The times themselves provide no small incentives for charity. As impious men renew their attacks against Jesus Christ (1)

(1) Is. v, 20.

(2) Coloss, III, 14.

(3) I. Io. iv, 21.

(4) ib. 20.

[*Latin ed. p. 403*]

403. It is the duty of Christians to revive piety and to restore charity, which is the source of great good. Therefore, let all discord cease; let those contentions be silenced, which dissipate the strength of those who contend, and which in no way benefit religion; and let minds be united in faith, wills in charity, and let life be lived, as is fitting, in the love of God and of men. The place [La Charite] urges, in particular, fathers of families to strive to govern their homes according to these precepts, and to instruct their children from a young age. The beginnings of the state are encompassed within the family, and a great part of the fortune of states is nurtured within the domestic walls. Therefore, those who wish to tear away from Christian institutions, and who devise plans sprung from a corrupt root, hasten to corrupt domestic society. Let no consideration deter them from this wickedness, for it is by no means possible to do this without inflicting the greatest injury upon parents: for parents have their right to instruct those whom they have brought forth, and, along with this duty, it is fitting that education and instruction should be in accordance with the end,

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for whose sake the gift of a child is received by the grace of God. Therefore, it is necessary for parents to strive and contend to repel all injustice in this matter, and to ensure that their children are educated, as is proper, in the Christian manner, and especially to protect them from those schools from which there is danger that they may imbibe the poison of impiety. When it is a question of shaping a virtuous youth, no effort or labor can be too great, and even greater efforts must be undertaken. In this regard, many Catholics from various nations are worthy of all admiration, who, with great expense and constancy, prepare true schools for the education of their children. It is fitting to emulate this salutary example, wherever circumstances may seem to require it; but it must be understood that domestic instruction can have the greatest influence on the minds of children. If adolescence finds discipline and the virtues of Christianity as a training ground at home, then the salvation of states will have a great safeguard. We have now seen what are the things that Catholics must follow and avoid at this time. — It remains, and this is your concern, Venerable Brothers, to ensure that Our voice reaches everyone, and that all may understand how important it is that those things which we have pursued in these letters may be put into effect. The care of these matters cannot be burdensome or difficult, because the yoke of Jesus Christ is sweet, and His burden is light. — If, however, anything should seem difficult in practice, you will give authority and, by your example, provide assistance, so that these [LITTERAE]...

[*Latin ed. p. 404*]

Let each one strive with greater zeal to remain steadfast and to fortify his spirit against difficulties. As we have often pointed out, it is in times of peril that the most excellent and supremely desirable goods are found; for the sake of whose preservation, all labors ought to be considered worthy of sacrifice; and these very labors will bring forth such a reward as a life of Christian action can bestow. Otherwise, to refuse to defend Christ is to attack Him; and He Himself testifies (1), that He will deny those who refuse to acknowledge Him before men on earth, before His Father in Heaven. As for us, and for all of you, we have never, as long as life remains, failed to ensure that our authority, counsel, and actions are available in every way during this struggle. And there is no doubt that, until this struggle is overcome, God's singular help will be given to both the flock and its pastors. With this confidence, we anticipate heavenly blessings, and as a pledge of our benevolence, We impart to you, Venerable Brothers, and to the entire clergy and people under your care, our apostolic blessing in the Lord. Given in Rome, near St. Peter's, on the 10th of January, in the year 1890, in the twelfth year of Our Pontificate. LEO XIII, POPE. (1) Luke, x,

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2-6.

[*Latin ed. p. 405*]

405 Apostolic Letters, in the form of a Brief, by which it is permitted that John Gabriel Perboyre be called by his blessed name, and that his relics be exposed for the public veneration of the faithful. The Vincentian confreres have earned the highest praise for their outstanding works, which they have acquired through their sacred missions within the Christian republic: in particular, their virtue has been enhanced by the propagation of the Catholic faith among the people of China, a work that will always remain a testament to their deeds and a source of merit. This confraternity has provided many examples of what the study of religion and charity towards one's neighbor can accomplish in the execution of such a difficult and laborious task, and for this reason, it is worthy of receiving from God the honorable and pleasing offerings that it desires, which will accumulate the praises of all-powerful virtue with the triumphant laurel of martyrdom. God bestowed this honor upon John Gabriel Perboyre, who, after having diligently labored for nearly five years in China to spread the Christian doctrine, was finally condemned to death and, willingly, shed his life with his blood for Christ. He was born in the village commonly called - Puech - within the boundaries of the Cadurcensis Diocese on the 8th of January, in the year 1802. His parents, Peter and Mary Rigai, were devout and diligent people who raised a family of eight children, instilling in them piety and all virtue, so that five of them would enter religious congregations, while another would be taken by death before their time. But John Gabriel surpassed them all, who from his earliest childhood aroused great hope and expectation for himself. It is known that as a boy, he avoided games and amusements, contrary to the custom of his age, and did nothing frivolously; therefore, his father, who was engaged in business, entrusted him, when he was not yet six years old, to the care of a small flock of sheep. But while others were destined by God to tend flocks, it happened that, contrary to his will, after two years, his parents changed their plans for the boy, taking him from the fields and entrusting him to the teacher Jude, to be instructed in the humanities and letters. It is easy to imagine how eagerly John Gabriel, eager to acquire knowledge and cultivate his mind, devoted himself to study. However, he devoted no more effort to learning letters than he did to cultivating virtues, in which he excelled so much that he was considered and called a saint by all. Thus, this excellent young man progressed in piety no less than in years, so that the words of the wise perfectly suited him: "The path of the righteous is like a shining light, which grows brighter and brighter until the day."

[*Latin ed. p. 406*]

406 LETTERS, up to the perfect day. - But the power of divine providence

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quickly provided the cause for which access to the Vincentian Society was easily opened to him through sacred missions. When, while accompanying his brother Aloysius on his journey to the Seminary of Montauban, he stayed there for a few days, it happened that the directors and teachers of the Seminary were greatly impressed by the outstanding character of John Gabriel, and, being unwilling to let him go, they did not want to dismiss him. Therefore, after obtaining leave with difficulty from his parents, they gladly received him into the Seminary, and first directed him to the study of the humanities, and then to more rigorous disciplines. In this new course of studies, it clearly became apparent what kind of intelligence, diligence, and constancy he possessed: for he surpassed all his peers in every way, and far exceeded the expectations of his teachers. He progressed so much in philosophy that he became a doctor after being a student. However, because of his singular modesty, which is often the guardian of virtue, he never behaved haughtily, but preferred to be inconspicuous among his classmates than to shine, and he held before him the principle of humility, which is in harmony with the Christian precept: "Love to be unknown and to be accounted as nothing." - Meanwhile, he felt divinely drawn to the Society of St. Vincent de Paul, whom he had already revered from childhood with particular devotion, and he easily persuaded the superiors to admit him into the ranks of the novices. Two years later, having already dedicated himself to God, he took religious vows, and this happened in the very same year in which the Venerable Francis Clet, through his illustrious martyrdom in China, won the first palm of honor for John Gabriel. However, he, who was already contemplating the regions of China, spared no effort to prepare himself for this great work with all possible means. Therefore, he diligently devoted himself to the study of theology and sacred literature: and he was particularly zealous in the doctrines of St. Thomas Aquinas, from whose works he drew abundantly the wisdom of Christianity. Thus, richly endowed with knowledge, when he was in Paris, with incredible joy, on the ninth day before the Kalends of September, he was initiated into the priesthood, just as St. Vincent de Paul had been before him. Then, considering himself no longer his own, but the property of God, bound by a kind of servitude, he resolved to devote himself entirely to His glory and the salvation of his neighbors. Having bravely entered upon the path laid down by Christ, he never wavered from it, and he strove to achieve as much as he could through perseverance. Because of this singular piety and sanctity of life, he made such great progress in the honor of God that, when he was engaged in sacred works in the mystery of divine charity, he

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[*Latin ed. p. 407*]

LETTERS 5. Having fixed his mind in contemplation, he seemed to possess a celestial countenance, both in his very expression and in his bearing.

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From these qualities, he enjoyed great esteem among his companions, and although he was not yet of mature age, he received many honors and responsibilities. However, a great desire had long possessed John Gabriel to undertake the apostolic mission of going among the barbarian peoples. When he expressed this desire to the superiors of the sodality, he made a vow, a decision made not without the counsel of divine providence. For, as he was not yet strong in health, they consulted a physician. This physician declared that it would be impossible for a frail young man to undertake such a long and arduous journey without facing certain danger of death. John Gabriel, with fervent prayers and abundant tears, and as the day approached when the Virgin Mary's child was to be baptized, prayed and implored the celestial Mother, that what he had long desired in his vows might finally be granted to him. The Virgin Mary, being propitious, appeared to him in prayer: for a certain scruple was implanted in the physician, which tormented and disturbed him throughout the entire night; and therefore, when the first light appeared, he returned and consented to him, that he might undertake the journey. This outstanding hero of Christ, without any delay, departed from the house of the sodality, leaving behind his weeping companions, promising not to return. He set out directly for the Port of Glory, for at that time, a certain merchant ship was there, preparing to sail to the East. As he was boarding the ship, his younger brother, Aloysius, who was more mature in spirit than in years, appeared before him; this same brother had set sail from that very port, bound for a maritime journey, and was swept away by a storm. After a long voyage across the ocean, he finally reached the longed-for shores of the Empire of China, which face the rising sun, and near the city of Macao, he disembarked from the ship. From there, he set out for the station assigned to him by God, and after two months of arduous travel, weary but not broken, he arrived at his destination. Here, entering into a new and unusual way of life, he never concerned himself with anything more, and he always kept before his eyes, that he might faithfully and completely fulfill all the duties of his office. Neither the vastness of the regions, nor the severity of the climate, nor the dangers of the place, deterred him from visiting the Christian communities of his faith, from confirming the newly converted in religion, and from bringing the light of truth to those who sat in darkness and in the shadow of death. He was always prepared and eager for every ministry, and he considered labors, vigils, and all other things of little consequence, where the eternal salvation of souls was at stake. But, as if all these were not enough, he imposed upon himself voluntary penances, for he used the hovels of the poor as his dwelling, he fed on boiled herbs, and he found rest:

[*Latin ed. p. 408*]

408 Letters and sleep were lacking; he was whipping himself with

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scourges and binding his sides with sharp iron. Moreover, it also happened that, at times, when he seemed utterly abandoned by divine help, he was overcome by incredible anguish of spirit. But just as an angel appeared to comfort Christ, so Jesus himself refreshed his servant with a heavenly vision, and encouraged him to extend his hand securely to the wound in his side, adding and confirming his words. For the day and the time were drawing near when the invincible martyr was to exhibit the ultimate proof of his virtue. Suddenly, as if a great storm had arisen, the Christians were harassed by the edicts of that region's prefect and condemned to death. But that heavenly comfort and the greatest honor were granted to John Gabriel by divine goodness, so that, amidst the most grievous torments which he endured, he might attain certain resemblances to the divine Redeemer. Indeed, when he was fleeing from approaching enemies and hiding himself in the nearby forest, he was betrayed by one of his disciples, in a manner similar to Judas, for the price of thirty pieces of silver. As the hand of the brutal executioners drew near, one of the disciples, namely Peter, wanted to draw his weapons and repel the violence with force, but following the example of the divine Master, he commanded him to put away his weapons and to present himself to the enemies. They, just as the Jews did to Jesus, seized the man, beat him, cut him with a sword, bound him with chains, and dragged him through the city, exposed to the greatest shame, almost naked. Without delay, he was brought before the tribunal, and there, with his hands bound behind him and his knee bent, he was ordered to answer questions about his country and his religion. But as soon as he confessed that he was a Christian, he was showered with insults and reproaches by the crowd; the judge, however, inflamed with rage, ordered him to be bound more tightly and handed over to a certain man, called "Tiger" because of his savage nature, not to be guarded, but rather to be ill-treated. The following day, as he was being led to the city, which was situated some distance away, he was forced to walk. There was no one who did not, in the manner of the man of Cyrene, support the holy man, who was almost exhausted by hunger, battered in body, and drained of all strength. To this man, John Gabriel, who had so well deserved it, appeared in a vision after his martyrdom, spoke kindly to him, invited him to the Christian truth, and obtained heavenly rewards from God. Having been ordered to stand before the military prefect at the tribunal, and after confessing his faith in the Catholic religion, he imitated Jesus and answered nothing more; as a result, he was cruelly beaten with whips and scourges and dragged into a more terrible prison. But perhaps he was more afflicted by the pain of his spirit than by the pain of his body. For when...

[*Latin ed. p. 409*]

LETTER 409: Having been commanded to cast away the image of the

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Crucified Jesus, he kissed it with profound reverence, shedding abundant tears. The most wicked brigands profaned both it and the images of the Virgin Mary, subjecting them to every outrage. Wherefore, John Gabriel was so overcome with sorrow that he seemed to be on the verge of death. But he also endured this affliction with great patience and sorrow, and it was added that not a few of his disciples, having sworn an oath of Christian faith, deserted him, and, urged on by the judges, reproached him for his lack of fidelity and for his profanation of the sanctity of the faith and religion. Truly mocked, placed in derision by the audacity of his adversaries, cast into tighter bonds, and so cruelly scourged and tormented that not only did blood flow profusely, but even pieces of flesh were torn away, and moreover, a mark of infamy was burned onto his forehead with a hot iron, he endured all things, and he bore all things with a spirit that was both steadfast and unconquered. Finally, after having patiently endured so many exquisite torments for a whole year, and bearing the inscription of the capital punishment, he was led, along with five of the most wicked men condemned for heinous crimes, to the extreme penalty. Thus, this most courageous man, who seemed to be hurrying towards triumph with a serene and joyful countenance, completed the virtues of his soul through martyrdom, suspended by a rope from the beam which took the form of a cross, on the eleventh day before the Ides of September, in the year 1840, on the same day and almost at the same hour that Our Lord Jesus Christ died. Since his death, both in time and in manner, and in almost every respect, was so similar to that of John Gabriel, there is no doubt that he should be numbered among those most blessed whom God foreknew and predestined to be conformed to the image of His Son. Already, the sanctity of John Gabriel was a great commendation; but after his glorious martyrdom, it was increased and spread more widely, reaching Europe from Asia with great fame. Wherefore, Pope Gregory XVI, approving the judgment of the particular Congregation of Sacred Rites, which had been appointed by him, signed the commission for the introduction of the cause of the Venerable Servant of God with his own hand, on the ninth of June, in the year 1843, and then, at our command, after all that was necessary in such a judgment had been completed, it was begun before the Congregation of Cardinals presiding over the Sacred Rites, to determine whether, from the legal evidence taken, it could be established that the Servant of God, John Gabriel, was a martyr, and the cause of his martyrdom, and whether there were signs or miracles that were attributed to God, through the intercession of the Venerable John Gabriel. After all things had been carefully weighed by the most severe judgment, and after the votes of this Congregation, a decree was issued on the seventh day before the Kalends of December of the preceding year, establishing that the Venerable Servant of God, John

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Gabriel Perboyre, was a martyr, and the cause of his martyrdom.

[*Latin ed. p. 410*]

410 Letters, illuminated and confirmed by numerous signs and miracles from God, we have duly declared. It remained that the aforementioned Congregation of Cardinals be asked whether, with the approval of the martyrdom and the cause of martyrdom illuminated and confirmed by numerous signs and miracles from God, it is safe to proceed to the beatification of the Venerable Servant of God, John Gabriel Perboyre, and that, in a general assembly held before Us on the fourth of the Ides of March of the year 1889, they unanimously responded that it is safe to do so. However, in this matter of such great importance, We hesitated to reveal Our mind until, through fervent prayers, We sought help from the Father of lights. Having done so, on the feast of the Ascension of Our Redeemer, We decreed that it is safe to proceed to the solemn beatification of the Venerable Servant of God, John Gabriel Perboyre. Since these things are so, moved by the prayers of the entire Vincentian sodality, We, by the authority of these letters, grant the following: that the same Venerable Servant of God, John Gabriel Perboyre, be henceforth called Blessed, and that his body, or rather, his relics, be presented for the public veneration of the faithful, although not in solemn processions, and that images of him be made. Furthermore, by the same authority, We grant that an Office and a Mass be recited for him annually, of the common rank of a martyr, with prayers approved by Us, according to the rubrics of the Roman Missal and Breviary: and We grant that the recitation of this Office be permitted in the diocese of Cahors and in all houses or temples of the aforementioned sodality by all those who are bound to recite the canonical hours, and that, with regard to the Mass, all priests, both secular and regular, may come to the churches in which the feast is celebrated. Finally, We grant that the solemnities of the beatification of the Venerable Servant of God, John Gabriel Perboyre, be celebrated in the aforementioned temples with an Office and a Mass of a double major rank, which We command to be done on a day designated by the Ordinary within the first year, after the same solemnities, due to circumstances of time, have been celebrated in the upper hall of the portico of the Vatican Basilica. Notwithstanding any constitutions, etc. We decree, etc., that this be observed. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the ninth of November, 1889, in the twelfth year of Our pontificate. M. CARD. LEDOCHOWSKI.

[*Latin ed. p. 411*]

4. ON THE FEAST OF BLESSED JOHN GABRIEL PERBOYRE, MARTYR — MASS. - In the Office of the Common of One Martyr, not a Doctor, with the following: O Lord Jesus Christ, who made Blessed John Gabriel, your Martyr, among the people of China, wondrously effective through the

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innocence of his life, his apostolic labors, and especially through his participation in your Cross; grant, we beseech you, that by following the example of his faith, charity, and patience, we may deserve to be sharers in his glory: Who lives... SECRET: May this offering, O Lord, which prepared Blessed John Gabriel to undertake the struggle for the faith, confer constancy in your service and salvation upon us. Through the Lord... COMMUNION: May the sacraments received grant us, O Lord, the power whereby Blessed John Gabriel was able to live innocently and to carry the triumph of martyrdom. Through the Lord... DECREE: In the Apostolic Letters, in the form of a Brief, to be expedited in order to attain the formal Beatification of the Venerable Servant of God, John Gabriel Perboyre, Martyr, Priest of the Congregation of the Mission, the following proper prayers should be added to the Office and Mass of the Common of One Martyr, in honor of the new Blessed, to be recited by all those to whom the faculty has been granted to recite the Office and to celebrate the Mass. The Sacred Congregation, using the faculties specially granted to it by the Most Holy Pope Leo XIII, having approved the aforementioned proper prayers, which were reviewed by the Reverend Father Augustine Caprara, Promoter of the Sacred Faith, in response to the humble petitions of the Reverend Father Philip Valentini, priest of the Congregation of the Mission, the Cause's promoter, grants to all those to whom the Office with Mass has been granted, that they may recite them after the formal Beatification has been completed. Contrary to any prohibitions. On September 11, 1889. RAPH. Card. MONAGO L. * S. VINO. Nussi S. C. R. Secretarias.

[*Latin ed. p. 412*]

412 FROM THE HOLY CONGREGATION OF THE COUNCIL OF MONOPOLI, CONCERNING THE REDUCTION OF BURDENS AND ABSOLUTION. August 3, 1889. Through summary petitions. Thomas Pepe, in a humble letter, recounts that his father, named Michael, had inherited certain urban properties, to which was attached a perpetual burden of Masses, namely, the obligation to pay annually 60 ducats to the parish priest of Fasano for the celebration of Masses in the chapel of St. Charles Borromeo, located within the same parish church. However, his father, from the year 1869 until his death, abstained from fulfilling this obligation for thirteen years, because he had to engage in a long and expensive legal dispute with the treasury, which claimed that it could rightfully demand this sum as a customary benefit. The petitioner states that he, having inherited the properties and the burdens of his father, desires to fulfill the imposed obligation; but, being hindered by serious family affairs, he has thus far only partially fulfilled the burden of the Masses. Indeed, because the family's circumstances are poor, and there is no hope that they will improve, since the petitioner and his wife are still young and easily burdened with more children; and because it is feared that future heirs will neither be able nor

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willing to fulfill the obligation; therefore, he implores that, after a prior absolution regarding the past, the burden of the legacy be, from now on, permanently reduced for the lifetime of the petitioner, with a significant reduction of Masses, to be determined at the discretion of the Ordinary. The Ordinary not only commended the petitioner's prayers, but also added new requests on his own behalf, requesting that Masses be celebrated everywhere. SUMMARY OF THE FACTS.

[*Latin ed. p. 413*]

MONOPOLI 413. Synopsis of Discussion. Although the Church, for a just cause, can alter the last wishes of the faithful, and can not only reduce, but even entirely remit, the obligations of Masses; nevertheless, in this matter, it does not appear that the circumstances are of such necessity that what is requested must be universally granted, especially because a nearly total nullification of the bequest would result. Firstly, it is not certain that Masses against the will of the testator must everywhere be celebrated in the future; for there is no present reason alleged for this. Secondly, it does not appear necessary to completely exempt future heirs from the burden of the obligation; for since parents promise to fulfill the just obligations of the Masses, it is not understood that the children, whether infants or yet unborn, should be absolved from these same obligations, and therefore absolved, in anticipation and by conjecture of their future inability and wickedness. Rather, it could be decreed that parents should strive to educate their children in justice, and if, in the future, they should become unable to fulfill the obligations, the benign Church, as she is wont to do with others, will also grant them dispensation at that time. With these matters, for whose granting no sufficient reason seems to be alleged, having been stated, with regard to the rest, namely, with regard to the remission of past obligations and the reduction of present ones, it was left to the Eminences and Reverend Fathers to consider whether sufficient reasons could be presented. Family hardships and expenses incurred in the redemption of the bequest have, on other occasions, made those concerned favorably disposed towards the Holy See, as the Eminences and Reverend Fathers well know. With these things noted, the question was raised as to what should be answered in prayer. RESOLUTION. The Sacred Congregation, having considered the matter on August 3, 1889, decided to respond: For the grace of remission with regard to the past, a certain number of Masses, to be determined by the Bishop, shall be celebrated to alleviate his conscience; with regard to the future, the matter shall be referred to the Reverend Secretary with His Eminences.

[*Latin ed. p. 414*]

414. TARENTO. MORTGAGE BOND. September 7, 1889. By summary proceedings. Count Francis de Notaristefano is the possessor of a certain

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benefice from the military Order of Saint George, which benefice is, by right, a patronage of his family. According to a civil law of June 29, 1873, the assets of this benefice were to be redeemed. After several years, it appeared expedient for family affairs to transfer these assets of the benefice, along with other family assets, to another location. The Count, who is pious and religious and has been excused by his Ordinary, requested permission to do so, and obtained it in an audience on January 17, 1883, "granting the freedom to exchange funds here and there, with the right of redemption reserved, and the transfer, etc." However, it was not possible to make the transfer of the assets in a legally valid form before the civil court, in favor of the benefice, because of a political regulation; and therefore, the Count was excused from fulfilling this condition, which is usually imposed. Meanwhile, after a few more years, the Count, due to new family necessities, contracted a loan, and the creditor ordered a mortgage bond to be placed on all of the family's assets; and thus, even the assets of the benefice fell under this bond, although, as it is asserted, the remaining assets of the family were sufficient to secure the credit. Now, the Ordinary reports that the Count, the petitioner, wishes to contract a loan to be repaid over a period of 40 or 50 years. Regarding this matter, he prays that the mortgage bond may also be extended to the assets of the benefice, and that he may be granted an absolution, so that he may not incur any penalty for having assigned and permitted a creditor to place a mortgage on the assets of the benefice, which, however, the Ordinary asserts happened in good faith. However, in an audience on May 2, 1887, it was decided: "It is not expedient to grant what is requested."

COMPENDIUM OF THE CASE.

[*Latin ed. p. 415*]

TARENTINA 415. Again, at the urging of the nobleman and with the Ordinary praying that he might be permitted to pledge the assets of the endowment as collateral for a period of 25 years, it was nevertheless decreed on July 17, 1887: In the decrees. The Archbishop, insisting on the third point in favor of the petitioner, noted: that the petitioner is entirely of a blameless life and a true Catholic; that he is blessed with a numerous progeny, and that his economic condition is precarious, independent of his work. The endowment is a lay endowment, founded by his father and suppressed by civil law; thus, it cannot be transmitted to his only male heir. The statutes of the Order permit that the assets of the endowment may be pledged as collateral for 25 years with the consent of the Holy See. The assets of this endowment are already subject to a general mortgage; however, through the proposed arrangement, this could be reduced to 25 years. Unless the petitioner obtains this grace, his economic situation will be placed in a very serious condition, and his conscience will remain troubled.

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Synopsis of the Discussion: In law, little needs to be said, for the canonical prescriptions are clear in this matter. The assets of an endowment are considered to be part of the ecclesiastical census; however, a mortgage falls under the species of alienation and censure; therefore, it should not be permitted without a reason of evident utility or necessity. In this matter, however, not one, but several motives of utility or necessity are presented, among which the most prominent is the temporal benefit that will accrue both to the pious and needy family, and to the assets of the endowment itself. Indeed, since these assets have already been pledged as collateral, this is illegitimate insofar as it concerns the Church, but valid insofar as it concerns civil law; and furthermore, since there is no hope that the nobleman will be able to revoke what he has already permitted out of necessity and in good faith, nor that the assets of the endowment will be able to be restored to freedom immediately, it follows that today we are not properly dealing with a new burden to be inscribed, but with acquiescing to a necessity and permitting that an older collateral be replaced by another which is said to be milder; which...

[*Latin ed. p. 416*]

416. The matter concerning Taranto appears to be directed towards the benefit and advantage of that pious institution. Furthermore, it is said that the statutes of the religious Order permit that properties entrusted to them may be granted as collateral for a period of 25 years, with the permission of the Holy See. Having noted these points, the question was raised as to how the prayers should be dismissed. RESOLUTION. The Sacred Congregation, having knowledge of the matter, decided on September 7, 1889, to respond: "For the sake of clarity, after consultation with the Most Reverend [Prato] Bishop, on September 7, 1889, Session 24, Chapter 8, Concerning Reforms." COMPENDIUM OF THE MATTER. By a pontifical bull dated January 2, 1773, a penitential prebend was established in the cathedral church of Prato, and with regard to its provision, the following were stipulated: "Moreover, to those holding dignities and canonries, as well as to the noble Joseph Inghirami... the right of patronage and of presentation to said canonries and prebend is granted, by these presents established and instituted; to us and our successors, and to our and their vicars, both on this first occasion, and whenever they may become vacant in the future, from any person, even from the Apostolic See, in any manner and in any way, in any year or month, only one of three suitable persons, previously designated by us and our successors, and before the chapter and the aforementioned Joseph Inghirami, or other legitimate patrons, shall be presented for election among them, only to be revealed to them, and the greater number of votes shall be secretly and collegially given by the aforementioned patrons, for the establishment of such a canon in the aforementioned church, with the rights to be observed according to law; thus, the right of patronage

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and of presentation of such a prebend is reserved to the aforementioned patrons."

[*Latin ed. p. 417*]

PRATO. 417. Not by privilege, but by true, primordial, real, and actual, complete and every way valid foundation, and perpetual lay endowment, solely from the patrimonial and lay goods of the aforementioned testator, it pertains, and to these belong, and that all presentations made by the aforementioned patrons for the aforementioned canonry and for providing, as is fitting, a suitable person for the time, are valid and effective, and produce their full and complete effect; this authority, and all other means by which we can, we reserve, grant, and assign. In these matters, etc. Given at Prato, from the Episcopal Palace, on the 2nd of January, 1772. Furthermore, it is said that the pious man, who had left goods for the establishment of a penitentiary, prescribed the following further things in his testamentary codices, namely, that the penitentiary should originate from the city of Prato, that its director should be a nobleman, a doctor of both laws, or at least in theology; and that, unless a suitable nobleman is available, someone can be taken from the order of citizens, with due regard for the more worthy. Therefore, the provision for the penitentiary appears to be contained in the laws, which, for greater convenience, can be presented in distinct chapters as follows: 1. The provision should be subject to a mixed patronage, namely, of canons and one from the Inghirami family; 2. However, they should not be able to present the person most pleasing to themselves, but only one, endowed with certain particular qualities, and chosen from three previously designated by the Bishop. 3. The election should be made collegially and by secret ballots, and the elected person should be retained, who obtains the greater number of votes, provided by the same patrons secretly and collegially. 4. Finally, "should the (benefice) become vacant from any person, even at the Apostolic See, in any way and at any time, for any number of years," the institution should be reserved to the Ordinary of Prato. Furthermore, it happened that the last holder of the penitentiary benefice, Caesar Lumini, passed away from this life in the month of May of the year 1887, which is a papal month and reported to the Apostolic See.

[*Latin ed. p. 418*]

418. The Prelate, considering that laymen were present in the exercise of legal rights, believed that, in this instance, the provision of the benefice should be referred to the Holy See, and that he, therefore, had nothing to do but to announce a public meeting according to the form of the Pastoral Constitution of Benedict XIII. He stated that, once and again, priests had been publicly summoned to the meeting, possessing the qualifications required by the sacred canons and by the pious founder, but that the meeting

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had been deserted on two occasions. Since it seemed that the difficulty lay in finding a priest endowed with all the qualities required by law and by the pious founder, the same Prelate humbly implored the Reverend Prefect of the Sacred Congregation to declare whether the Ordinary could appoint one of the priests, who had not yet reached the age of ordination, or who lacked a doctorate, to fill the position; and whether a designation made by the chapter of one of these priests could be favorably received by the Apostolic See. With these considerations in mind, on December 3, 1887, in virtue of special faculties granted by the Most Holy Sacred Congregation, the following was decreed: "Regarding the matter of whether one can be appointed who is not endowed with the necessary qualifications required by law, for the sake of presenting more suitable candidates, this is left to the judgment and conscience of the Bishop." Using this dispensation, the Ordinary presented three priests to the chapter, so that one of them might be chosen according to the statutes of the foundation; but none of the three candidates obtained a majority of votes. It should be known that, according to the special law of this chapter, as prescribed in article 5, page 9 of the Constitution, "matters and affairs pertaining to the dignity and canons, and which concern them directly, shall be discussed and decided by two-thirds of those present and summoned." Some canons maintain that this rule should also be followed in the provision of the penitentiary; while others claim that the charter of erection prescribes only a majority of votes for the election of the penitentiary, and therefore, two-thirds of the votes are not required. Whatever the case, of those presented, none obtained even two-thirds, let alone a majority of votes.

[*Latin ed. p. 419*]

The matter was debated with 419 votes in the affirmative, but only one vote was given in the relative sense. Therefore, after the scrutiny was completed, and since the canons could not agree among themselves, it was decided to refer the matter to the Bishop; but the Bishop did not overturn the vote of the Chapter, and, in order to avoid further disputes, he submitted the matter to the judgment of the Apostolic See.

Synopsis of the Dispute. In this case, four points remain to be discussed: 1. Whether the provision for the benefice in question is reserved to the Holy See in this case; 2. Whether the election made by the canons is valid, even if it is only a relative majority of votes; and, if not, 3. Whether the Bishop is obliged to propose a new list of candidates to the Chapter; 4. Finally, it is asked whether, if a new election is to be held, candidates who are not of the clerical order may be proposed.

Regarding the first question, concerning whether the collation of such a benefice is reserved to the Holy See in this instance, because the vacancy occurred during the month of August, it is necessary to refer to Canon 9 of the Chancery, which states that all benefices, whatever their qualifica-

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tions, are reserved for certain months in the event of a vacancy. This is a general provision. However, it must be conceded that certain types of benefices are excepted from this rule, and in particular, benefices subject to lay patronage. "And on this point, all agree that benefices of a similar nature (those subject to lay patronage) are neither subject to this Rule IX of reservation, nor to any other reservations." Thus, Riganti, on Canon 9, page 1, § 2, number 335. On the other hand, benefices subject to ecclesiastical patronage are generally subject to Apostolic reservations, as the same author expressly states, ibid., numbers 72, 144, 160, 200. But if the question is about mixed benefices (those subject to both lay and ecclesiastical patronage), there is no consensus. For, according to Schmalzgrueber, on the title "De praebendis," number 291, there are serious doctors who believe that such benefices are always subject to reservations, arguing from chapter 3 of the "Quaestiones de Consecratione Ecclesiastica," because a part [of the benefice]...

[*Latin ed. p. 420*]

420. QUESTION. A less worthy patron draws to itself a more worthy one. However, 2.) Others, in greater number and authority, teach that, not always, but only in certain cases, benefits under mixed patronage are subject to reservations; namely, that the mixture of lay and ecclesiastical votes must be considered, so that if the laity have a greater or at least equal number of votes compared to the ecclesiastical patrons, the benefit enjoys a lay privilege and is considered exempt; conversely, it remains subject to reservation if the ecclesiastical portion is the greater and predominant. Thus, Gonzalez, in *Reg. 8 Cancellariae*, gloss. 18, n. 15; Wiestner, in *tit. de Praebendis*, n. 134; Schmalzgrueber, *ibidem*, n. 291, and in *tit. De iuspatronatus*, n. 28; Lessius, *De iustitia et iure*, book 2, chapter 34, who gives this reason for the distinction, because "ecclesiastical patrons, whose consent is sufficient, are bound to admit a derogation if they are the majority"; similarly, Lotter, book 2, question 10, n. 65; Oavaler, decisions 278, 547, and others cited by Cardinal De Luca, *De iurepatr.*, discourse 59, n. 23. Therefore, when the matter concerns mixed patronage, in which the lay element is scarcely appreciable in relation to the ecclesiastical element, according to the aforementioned opinion, it should be concluded that the benefit is subject to reservation. And in this hypothesis, the Bishop's action or at least the calling of a meeting would not be contrary, but perfectly legitimate. Indeed, according to the decree *Pastoralis officii* of Benedict XIII, in Italy, a penitentiary is to be conferred "in formal consultation, in exactly the same manner as parish churches are conferred." Parish churches, if they are under ecclesiastical patronage, and likewise also if they are under mixed patronage, when they come under ecclesiastical jurisdiction, are to be provided for beforehand with a consultation, as decreed by Trent, session 24, chapter 18. Nor is the case to be excluded when, by reason of a reservation,

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the provision of the benefit pertains to the Holy See; indeed, from the decree *Cum illud* of Benedict XIV, we know that if "parish churches and dignities, etc., become vacant in reserved months, or are reserved to the aforementioned See for another reason... in either of these cases, the Pope declares, the Bishop is to call a consultation without any distinction to this end."

[*Latin ed. p. 421*]

"Let them understand that these letters grant him the requested permission or license." Therefore, in the aforementioned hypothesis, a concurrence should certainly have been indicated. Whether, after these things, the Bishop is still bound to propose the candidate among the three approved by the chapter; or rather, whether the Bishop alone has the right to choose the more worthy candidate, reserving to the chapter only the bare presentation of the candidate chosen by the Bishop; this is a matter that is not without discussion. The Council of Trent, in the aforementioned passage, seems to favor the second hypothesis more than the first; and Lucidi, in his *Ad lib. 1, page 369, new edition, no. 187*, seems to conclude in the same sense, when speaking precisely of ecclesiastical and theological benefices, he says: "If the institution [of these benefices] pertains to someone other than the Bishop, e.g., to the Pope by right of reservation due to a vacancy during reserved months, then, even in the case of parochial benefices, the election of the person would pertain to the Bishop, with the chapter retaining the right to actually exercise the presentation of the more worthy candidate. " Benedict XIV also follows this argument in *De syn. dioec. lib. 4, c. 8, no. 7 and following*. However, it does not seem necessary to dwell further on these explanations, since the third opinion seems more true, namely that mixed patronage, although the votes of the clergy may prevail, is nevertheless, with regard to the effect in question, entirely equivalent to lay patronage, and therefore the benefices subject to this patronage are not subject to reservations, nor to concurrence; but are always and unconditionally conferred according to the prescriptions of the founders. Indeed, that benefices subject to lay patronage are not subject to reservations, was noted above from Riganti; and that they are not subject to concurrence, although it is a matter of conferring benefices that are otherwise conferred through concurrence, is demonstrated from the Council of Trent, session 24, chapter 18, where, with regard to parochial benefices, the following caution is read: "If the patronage is of laymen, he who is presented by the patron must be examined by those same deputies, as mentioned above, and not admitted unless he is found worthy." Therefore, in lay patronage.

[*Latin ed. p. 422*]

422. PRATEN. First, the presentation [of a candidate] takes place, then the examination; certainly not a competition. However, the regulations for

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parish priests, established by the *Pastoralis officii* constitution, must also be observed regarding the care of penitents. Concerning the mixed patronage, although it is a mixture, as they say, and the ecclesiastical element predominates, nevertheless, it is now equated with the lay element and is free from reservations; whatever may have been the case formerly, this has been explored and, it seems, accepted in practice. For the matter at hand, it suffices to cite Riganti, who is rightly considered the foremost authority in explaining this subject, and who, after stating the opinion that mixed patronage was sometimes equated with ecclesiastical patronage, continues in regulation 9, paragraph 1, section 2, number 362: "Against this opinion, Amaydenus, in *De styl.* app. Dat. c. 15, n. 97, strongly objects, and he argues that the Sacred Congregation has resolved, dispelling the ancient opinion, and that this is confirmed by the style of the Chancery... And regarding the new practice introduced of not derogating from mixed patronage, even though it pertains for the most part to the ecclesiastical and for a smaller, or minimal, part to the laity, except in the case of the natural death of a beneficiary at the Holy See, Pitonius testifies in *Discept. eccles.* 3, n. 6, where he calls it most holy, so that lay people are not withdrawn from the foundation of churches and benefices. And this opinion is also strongly defended by Cardinal De Luca in *Disc.* 65, n. 32, and in *Disc.* 59, n. 23." Benedict XIV, in *De Syn. Dioec.*, book IV, chapter 8, n. 9, states: "Some were formerly doubtful whether the same should be established for a parish church that is subject to mixed patronage, and the Sacred Congregation, on February 5, 1628, declared that the rights of the laity should not be infringed in any way by reason of their association with the ecclesiastical, nor is an examination by competition necessary for the collation [of benefices] to such a church..." Fagnanus also agrees with this in *ad cap. Cum propter de Iurepatr.*, n. 59, along with others, especially more recent ones. Furthermore, the legal reason supports this, namely, that privileges reserved to lay patrons should not be diminished by reason of their association with ecclesiastical entities. But, moreover, special considerations must be diligently taken into account in this matter.

[*Latin ed. p. 423*]

"Furthermore, the words contained in the papal bull of erection, namely: 'To these dignities and canonical rights... the right of presentation...; We, says the Bishop, both on this first occasion, and whenever those holding the dignity and canonry, from now on, for all future times, should become vacant through any person, even within the Apostolic See, at any time and in any way, in any months of the year, reserve to ourselves and our successors the appointment of only one person from among three suitable persons previously designated by us... for the presentation of such a person.' Moreover, if the benefice is not subject to ecclesiastical patronage by law, but the founder, at the very beginning of the foundation, imposed a

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condition excluding such reservations (as Riganti expressly and commonly teaches in *ad reg.* 9, p. 1, no. 162; a fortiori, the benefice which is of mixed patronage must remain exempt according to the founder's will. Furthermore, reservation is understood to be exclusively excluded, according to Riganti, loc. cit., no. 162-172), 'if the founder orders that the presentation pertains to the Abbot, and not to another or others... And also, if it is said that no other superior may enter...' Again, the reservation is considered excluded from the conditions, always, for all time... And for the same reason, the reservation is considered excluded if, in the foundation, the power of presentation is granted to the patrons, as often as the benefice becomes vacant; just as if it had been said that presentation should occur, whenever and as often as.' This, indeed, must be understood especially 'when the founder established the benefice from his own goods.' However, all of this is most clearly verified in the matter, as it appears from the bull of erection in the aforementioned place. Therefore, it seems safe to conclude that the penitentiary [office] in the matter has been withdrawn from the apostolic reservations by the special will of the founder. But it might be asked, whether, at least in this case and from this special circumstance, because indeed, the provision for the penitentiary was not made by the ordinary collator within the useful time, that is, by reason of devolution, does the penitentiary provision pertain to the Holy See: if, indeed, six months are granted to the patrons for..."

[*Latin ed. p. 424*]

424. PRESENTATION. The presentation was to be made, and after this was not carried out, six others were to be presented to the Bishop for free collation; however, these terms had long since elapsed. It must be noted, however, that immediately after the vacancy, the Bishop did not abstain from repeatedly indicating the need for a new presentation; and when this remained unfulfilled, a recourse was made to the Sacred Congregation of Rites as early as November, seeking dispensation from the qualifications then required by both common law and the foundation itself; and this was obtained on December 3rd. The Bishop then, without delay, presented three candidates to the chapter, so that the process of the chapter making an election could proceed within the following six months; but in May, a new recourse was made to the Sacred Congregation of Councils to resolve the difficulties that had arisen regarding the value of the presentation, which had been made solely through votes, and which were now considered relatively greater. Furthermore, the Bishop doubted whether the collation even pertained to the Holy See. Therefore, since no negligence appears in these matters, this appeal seems undeserved. As Fagnanus states in *De concessionibus praebendae*, chapter *Nulla*, paragraph 33, "such an appeal is only valid when the one to whom the collation pertains has delayed conferring it through negligence; otherwise, if it occurs through

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impotence of law or fact, even with fault." These points having been noted with regard to the first matter, and as the gravity and complexity of the question required, we proceed to the remaining issues. And with regard to the validity of the election, the chapter members maintain that no one was duly and validly elected, because no one obtained two parts of the votes, according to the particular law of the chapter; nor did anyone obtain an absolute majority, but only a relative one. However, it must be observed that, whatever may be the case with the general law of the chapter, which requires that two parts of those present agree in order to conduct chapter business, in the case before us, there exists a particular law, established at the very foundation of the benefice, to which, therefore, one must give sole consideration. But this law stipulates that the one who receives the most votes shall be elected. Therefore, two parts cannot be required for the purpose of making an election. This is clear; but the question arises, when an inquiry is made about whether the founder intended a certain majority, or whether the question is...

[*Latin ed. p. 425*]

Whether the question concerns an absolute majority, so that only the one elected is considered to be such when the majority, that is, more than half of all those voting, agrees; or rather, a relative majority, so that the one elected is considered to be such who, among several candidates, has obtained more votes than the others, even if he has not exceeded, nor reached, half of all the votes cast by those voting. Furthermore, if the question were to be defined according to the common law applicable in ordinary elections, certainly only the so-called absolute majority would be considered; and therefore, in the present case, if no one has obtained this majority, no one should be considered elected. Conversely, it is stated that the founder ordered three to be presented, and that among them, the one who receives the most votes should be elected; since, however, general words are generally to be understood either absolutely or relatively, it seems that the condition imposed by the testator is verified. Indeed, since a scrutiny must be held among the three presented, it already appears from this very circumstance that the discussion cannot be about anything other than a relative majority; all the more so because in this way the term of the election would be made easier; while, if an absolute majority were necessary, the election would be difficult, and sometimes impossible, as in the present case. Finally, it cannot properly and precisely be said that this interpretation is contrary to the law. For here we are not dealing with an election properly so called, but with the designation of a subject to be presented by several patrons. Furthermore, Innocent III expressly states this in chapter "Quoniam" of the "De Jure Patr." < "if, perchance, the votes of the founders are divided among several parts, let him be placed at the head of the Church who is assisted by greater merits and is chosen and approved by the consent of the

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majority." > In the explanation of this passage, Fagnanus states in number 13: < "Quarto note there - and also (by) the approval of the majority) - that the presentation made by the majority of the patrons is valid, even with respect to the minority, even if it is not made by the majority of all, ... and thus, John Andrew and Cardinal, after Vincent, and Bernard Compostellan, boldly hold according to this Decree."

[*Latin ed. p. 426*]

426 PRATO. Decree of the Sacred Congregation of Rites, 563, number 2, in *Acta Recentiorum*, part 1. "Regarding the third point, namely, under the hypothesis that the election has been null and invalid, whether the Bishop is obliged to present new candidates to the chapter, it seems that this is required by the founder's law, which ordered that provision be made for penitents in this manner, namely, that the Bishop should propose, and the chapter should elect and present."

"However, since the Bishop has done what was incumbent upon him, and if no one was elected, and this remained so solely through the chapter, it seems that the principle praised by Fagnano in chapter [citation missing] can be applied here. For, according to the law, 'if the presentation is not made in due time, the collation is freely devolved to the Bishop.' Furthermore, it is well observed by the Bishop that if none of the three priests presented by the Ordinary were elected, the dignity itself would be harmed to no small degree, and that the lot which followed might also affect the second, third, and fourth [candidates]."

"Indeed, if the chapter could demand that new candidates be presented again and again, the power granted to the Bishop would be reduced to nothing, and the obligation of the chapter to elect among the three presented by the Bishop would also be rendered void."

"Furthermore, since the chapter, even if it had some right, has entrusted the entire matter to the Bishop, so that he may provide as he sees fit, this difficulty does not seem to be serious, at least in this case."

"Finally, regarding the dispensation to allow anyone from the diocese, other than the priests of Prato, to be elected to the benefice, it is clear that this grace was not requested except under the hypothesis that the previous election was invalid. Also, if the provision is made by the Bishop separately from the chapter, according to the law of devolution, there would not seem to be a place for the granting of this grace. For, since the Bishop has already presented three candidates to the chapter from the beginning, and has judged them worthy, with prior apostolic authority, as evidenced by the rescript of December 3, 1887, the election of those whom the citizens..."

[*Latin ed. p. 427*]

The circumstance suggests that it was 427, because it is only now that a dispensation from this condition is requested. Therefore, it appears that the

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Bishop today cannot rightfully condemn those whom he had previously approved, but if the provision for the penitentiary office depends on one Bishop, then one of those previously proposed, who was deemed worthy and is a citizen, must be chosen. However, if the provision for the penitentiary office does not rightfully devolve upon the Bishop himself, but a new presentation of three candidates is deemed necessary, whether it is permissible to expand the boundaries and even to choose suitable ministers outside the city, and whether this should be allowed, the prudence of the Most Eminent and Reverend Fathers has been lacking. With these considerations in mind, the following questions were raised: I. Whether and in what way the provision for the penitentiary office pertains to the Holy See in this case. II. Whether those who obtained a relatively larger number of votes should be validly considered elected by the chapter in this case. And to the contrary. III. Whether three new candidates should be presented by the Bishop to the chapter in this case. And to the contrary. IV. Whether there is a place for a dispensation, so that others and citizens are listed on the list of candidates and can be chosen in this case.

RESOLUTION. The Sacred Council, after deliberation on September 7, 1889, gave the following response: To I, negatively in all respects; to II, affirmatively; regarding the rest, provision is made.

[*Latin ed. p. 428*]

428 MONTÍSPALISO REGARDING PARTICIPATION IN CHAPTER MEETINGS. September 7, 1889. Session 22, Chapter 1, Concerning Reforms. Cardinal Laudisius, while still living, made provisions in his will for two of his estates, stipulating that a third dignity be added to the two existing chapter dignities in his cathedral church in Montispaliso, under the name of Archpresbyterate. Although the revenues of this new prebend were entirely separate and distinct from the revenues of the chapter, nevertheless, with the consent of the chapter, during its establishment, which took place on August 28, 1637, the founder desired that this new dignity should possess all the grades and honors of the chapter, and, among other things, with specific reservations regarding participation in chapter meetings, it stipulated: "That the archpresbyter should also have a voice in the chapter only in those matters and affairs which do not concern the interests of the chapter, since he himself has and must have his own separate prebend, and consequently also revenues separate from the revenues of the chapter. In other matters and affairs which do not concern the interests of the chapter, and especially in honorary matters, such as elections, nominations, presentations, and the like, and in other acts not containing the particular interest of the canons and other chapter members, he should have a voice in the same chapter, just as each individual canon has." Recently, that is, on March 13, 1887, it happened that, when a chapter meeting was held to take a vote regarding the request

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of Canon Constantinus, who was seeking to be appointed coadjutor, the archpresbyter, who had been invited, was not present; for which reason he protested. But shortly thereafter, again, at a meeting held to discuss the matter, which, according to the same archpresbyter, did not concern the interests of the ancient chapter, he was again omitted. For this reason, in April 1887, he appealed to the Sacred Congregation of the Council, in order to preserve his right of possession. Asked for information and a vote, and after hearing the chapter, the Bishop responded, among other things, as follows: "After citing the aforementioned decrees, a summary of the facts follows."

[*Latin ed. p. 429*]

MONTISFALISCI 429. Concerning the words of the erection [of the archpresbytery], it still seems that there is no doubt that the archpresbyter has the right to intervene in all meetings of the chapter, except for those in which matters concerning the interests of the chapter, or the administration of its goods, are to be discussed. The chapter, however, referred the text of the capitular deliberation, which is as follows: "The Lord Dean said that the archpresbyter had protested, because he had not been called to the chapter on March 13th, on which day a decision was made regarding the canonical petition of Canonico Costantini to obtain a direct coadjutor, and despite this protestation, he had not been called to the present chapter; and he considered that the rights of the archpresbyter were not diminished in this way, because it was a matter of a simple information, and certainly not of elections or appointments; nor could an example be found in past times of the archpresbyter's intervention in such assemblies."

Dispute of Syiioptica.

DEFENSE OF THE CHAPTER. The chapter declared, for the sake of the matter, that it was certain that the archpresbyter could be present not only at assemblies of elections, but also at preliminary assemblies for the election; but that to oppose such a right was contrary to a custom that had been overthrown for a long time by the chapter books; moreover, the chapter itself would voluntarily submit to the judgment of the Holy Congregation.

DEFENSE OF THE ARCHPRESBYTER. Conversely, the archpresbyter said: "His arguments are based on the decree of erection. It may be shown, without doubt, that some fact exists for which my predecessors were not called to assemblies; but it must be noted that other deans have also been vicars general, and for this reason they have been able to easily quell complaints and prevent appeals. And in another letter, referring to the particular and personal reasons for which the archpresbyter claims to have been excluded from the meeting on March 13th, the plaintiff added, as far as the legal point of the matter is concerned: 'It cannot be denied that the

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archpresbyter was called.'"

[*Latin ed. p. 430*]

430. MONTISFÁLISCI, or at the very least, concerning assemblies of the chapter in which matters of importance have been discussed: for from the reason by which the summons was made the day before, it cannot be determined whether the chapter is convened for its own affairs or for other matters. And since, when the chapter is indicated, without any addition, it is to be understood that the assembly took place for some matter of interest; to the extent that, if other matters were discussed in that assembly, it would have been done to the detriment of, and without the knowledge of, the Archpriest for the time being, whose rights could not be harmed by such a deception. Furthermore, from what has been presented thus far, it is clear that the entire question is reduced to custom. It is, in fact, agreed between the parties that the foundation charters favor the Archpriest, and undoubtedly grant him the right to intervene in all chapter assemblies, except for those in which matters concerning the old mass and the chapter itself, or temporal affairs, are discussed. However, the controversy brought to this point, it must first be noted that the records of the acts are not the chapter books to which the canons refer, nor any excerpt from them, from which a custom favorable to the Archpriest of Aversa can be demonstrated. And although the Archpriest seems to admit some cases of custom contrary to him; nevertheless, he also asserts that these were few and rare, and moreover, were carried out to the detriment of, and without the knowledge of, the Archpriest, and that he would not have tolerated such a thing with a calm mind. Moreover, if the Archpriests for the time being have not always resisted the injuries sometimes done to them, it should be noted that the former deans were also Vicars General at the same time, who were thus able to more easily quell such complaints and prevent appeals. But not even the Archpriest proves with positive arguments what he defends. The Bishop, however, abstains from speaking, and has not wanted to enter this province, nor to define whether and for how long the claims regarding the alleged custom are true or false. Therefore, we find ourselves in a situation where, when the question is about custom, about the existence or nature of custom, there is no external evidence.

[*Latin ed. p. 431*]

MONTISFALISCI 431: A document should be presented. Henceforth, when it is a matter of taking away rights and possessions, which rightfully belong to someone by a just and natural title, custom must be fully proven through a prescriptive process. And since the aforementioned chapter seems to place little trust in custom according to the archpriest of Aversa, – for although it has challenged it, it has nevertheless not been zealous in proving it, but has entrusted the entire matter to the wise discretion of

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the Sacred Congregation of Councils – now the Most Reverend Fathers will judge what should be decided in this matter. It could indeed be said, not without reason, that the chapter has completely submitted itself to the judgment of the Sacred Congregation, that the chapter has sent a messenger to the litigation, and has not insisted on defending its supposed right. Furthermore, if anything more could be added, it could be recalled that the legal point of this matter is that the chapter claims to have begun to use, or to prescribe, a right to exclude the archpriest from certain chapter meetings, to which, according to the founding documents, he had the right to intervene. Indeed, there is no doubt that these rights can legitimately be acquired through prescription, since it is certain that all private rights and goods, even ecclesiastical ones, can be acquired or prescribed through possession, or quasi-possession. Cap. 5, 8, 10 Concerning Prescription. But in order for prescription to be admitted, it is necessary to prove that the possession of the right was peaceful, that is, without violence; manifest, that is, not secretly; continuous; completed within the required time, and, for ecclesiastical matters, at least for a period of 40 years; and finally, held in good faith and under a just or apparent title. Reiffenstuel ad h. tit. cum communi. Moreover, it is not easy for the chapter to prove in this case that its prescription and its claim are based on all these requirements. But furthermore, since the intervention in the chapter meetings can be considered as a matter of faculty; and since "things of mere faculty cannot be prescribed, unless there is a prohibition from one party and patience from the other" (lib. 2, c. De serv., Heinecius ad tit. De usurp. et usucap., n. 215), then the chapter, in order to achieve something against the archpriest, must also demonstrate that it has at some time clearly and explicitly prohibited the archpriest from attending the chapter meetings, and that he was forcibly...

[*Latin ed. p. 432*]

432 MONTISFALISCI has always acquiesced, and the state of affairs regarding these matters has persisted for at least 40 years. Furthermore, it appears that this requires even more rigorous proof. Indeed, it cannot be assumed that, if before these 40 years the aforementioned peremptory prohibition and the subsequent acquiescence of the archpriest on the matter had occurred, the chapter would not have explicitly and in clear terms challenged it, and would not have presented it before the Sacred Congregation. However, all of these things, as is evident, are only stated hypothetically. With the foregoing points noted, the purpose was to resolve the doubt: Whether the archpriest has the right to intervene in all chapter meetings, in which matters of honor, elections, nominations, presentations, and other acts are discussed that do not involve a particular interest of the ancient canons in the case. RESOLUTION. The Sacred Congregation of Rites, after discussion on September 7th, gave the following response: Affirmative to the first part, negative to the second.

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REGIEN. CONVENTUAL MASS. On September 7, 1889. Through brief prayers. The chapter of the Regien Cathedral states that it has always celebrated the conventual mass, on days of a half or double lesser rite, without singing. It believes that this derives from an apostolic indult; for it cannot be assumed that so many bishops have tolerated this practice for so long without a legitimate title. If no memory of the apostolic indult is found in the chapter's archives, it may have happened because of an ancient...

COMPENDIUM FACTI.

[*Latin ed. p. 433*]

REGIEN. 433. The chanting [of the Divine Office] ceased towards the end of the 17th century, or perhaps at the beginning of this century, due to the French invasion. Recently, the Bishop, during a sacramental visitation of the cathedral, inquired about this practice, and the matter was discussed somewhat more seriously. It appeared to the Bishop, and still appears to him, that this unusual custom could not be explained otherwise than by a lax observance of canonical and liturgical doctrine throughout the Diocese; moreover, nothing is found in the ancient constitutions regarding this supposed privilege. Indeed, in a proposal for new constitutions to be issued in the year 1856, which, however, have not yet been published, it was stated that Mass should be sung daily for the Saint, and that permission should be requested from the Apostolic See to sing a second Mass on weekdays, when it occurs. Hence, no ancient privilege seems to exist. Therefore, the canons were urged to appeal to the Holy See. And they indeed approached the Most Holy See, not so much to obtain confirmation of the ancient custom, which they themselves declared was no longer suitable due to necessity, but rather to obtain, on this occasion, a new and more extensive grace, namely, that the reduction of the chanting be limited only to feast days, due to the decrease in the number of canons and singers, and due to the small compensation for the singers; which is the reason why it is with great difficulty that suitable personnel can be found for choral singing. However, the Bishop, noting that the choir is now in a rather poor condition, commends the requests of the canons for this grace. The Synoptic Preces [i.e., the Divine Office] are clearly opposed by the law. Indeed, it is found that Honorius III ordered the canons as follows (lib. 3 Decr. tit. 41, cap. II): "We command that you allow no torpor of negligence to overcome you, so that you may celebrate solemnities, both for the anniversaries of the dead and for feasts or weekdays, according to the appropriateness of the times." Acts, Vol. XXII, page CCLIX, 28.

[*Latin ed. p. 434*]

434. REGIE. Furthermore, Pope Benedict XIV, in his constitution, states that he desires "that the conventual Mass be sung daily in those collegiate

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churches," and indeed, according to the rubrics, "not one, but two, and sometimes even three, conventual Masses should be celebrated on a single day." This is in accordance with established custom and the constant discipline of the Sacred Congregation. However, it cannot be denied that, if just causes are present, a dispensation from this canon law prescription can be granted. Thus, in Fermo on June 7, 1848, in Berthonen on September 12, 1829, confirmed on July 27, 1844 (according to Lucidi, title 1, page 340, number ed.), in Ventimiglia on December 20, 1851, and in many other places, it was granted that the second and third Masses be celebrated without singing. Moreover, by decree of the Sacred Roman Congregation of November 12, 1831, found in Gardellini, number 4669, the canons were dispensed from singing the conventual Mass on those very feast days, whenever the Bishop celebrated a Pontifical Mass in the cathedral. Therefore, there is no doubt that, whenever a just cause is present, the capitulars can be excused from this obligation. Indeed, when the canons are lacking in resources to provide for the singing, the Sacred Congregation often, with the approval of Pope Benedict XIV in his aforementioned constitution, "considering the circumstances, reduces the daily application of the conventual Mass for the benefit of the benefactors, in general, to feast days only." Examples of such indulgences are not lacking, as in Brugnato, the conventual Masses of May 22 and June 26, 1830, in Città della Pieve on April 24, 1830, in Otranto on March 3, 1860, and in Clodien on April 4, 1846. Furthermore, arguing from the lesser to the greater, if, for a just cause, it is permitted and customary to limit the application of the conventual Mass to feast days, it can, a fortiori, be granted that, while the application remains constant, the celebration with singing be restricted to feast days. Whether such just causes exist, and especially whether these are the kind that suggest that the obligation of singing should be urged only on feast days, has been left to the wise judgment of the Most Eminent Prelates, based on the specific circumstances presented.

[*Latin ed. p. 435*]

REGIEN. 435. Certainly, another ancient custom existed; and while it permitted the omission of the "T" (i.e., the chanting of the Benedictus) only on days of double minor rank or semi-double rank, it thereby took care to ensure that due consideration was given to certain more solemn days, although not feasts. Indeed, it is easily understood how fitting and just this is, if one considers that many days were formerly observed as feasts by command, and that the Church only made them "ferial" (ordinary days) either to provide for necessity or to address the wickedness of men; while other days, as during Easter Week, the Rogation Days, and the Nativity of the Lord, were so sacred that it seemed entirely proper that they should be duly celebrated by the ministers of the Church. These days are not numerous; therefore, the burden on the chapter would be minimal. Having stated

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these things, the question arose as to what should be done regarding the responses [in the Divine Office].

RESOLUTION. The Sacred Congregation, after examining the matter, gave the following response on September 7th: "Regarding the custom, there is no need for concern; regarding the rest, it does not matter."

[*Latin ed. p. 436*]

430 APPENDIX VI. In which more matters concerning the Decrees of the Holy Congregation of Rites are presented. BOBIEN. The present Bishop of Bobien is preparing a new appendix to the Missal for his Diocese, and has proposed the following questions for appropriate declaration by the Holy Roman Church. In the most recent appendix, published in the year 1843, on the Feria sexta in Parasceve, a special prayer for the Bishop is to be recited after the Prayer for the Pope, and a special prayer for the King is to be recited after the Prayer for the Catechumens. On the Sabbath Day, after the words "Imperatoren nostrum N.," it is prescribed, together with "regem nostrum IV.," whose you are, O God, etc., and under the date of May 20, it is stated from the Decree of the Holy Roman Church of June 11, 1815, that another Mass is to be celebrated in the Cathedrals for the purpose of giving thanks, and that prayers of thanksgiving are to be added to all Masses celebrated. Therefore, the following questions are raised:

Question I. Are the special prayers for the Bishop and for the King to be recited in the Mass of the Precious Blood, when there is no established approval or apostolic permission for this, and it seems to contradict the Decree of the Holy Roman Church of September 1847, concerning Alben?

Question II. Is it to be recited on the Sabbath Day, after the Exultet, "Beyern nostrum N." in place of the words "Imperatorem nostrum N.," when, likewise, there is no established approval or apostolic permission for this?

Question III. Are the solemn Masses and the prayers recited in the Masses, as prescribed by the aforementioned Decree of June 14, 1815, still to be celebrated and recited, when, in almost all Dioceses of Piedmont (as also in several in this Diocese of Bobien for many years), this is no longer observed?

And the same Holy Congregation, after hearing the opinion of another of the Masters of the Sacred Ceremonies, in response to the aforementioned questions, has decided as follows:

Regarding Questions I, II, and III: Nothing is to be changed.

And thus it has been written and declared.

On May 9, 1884.

CONGREGATION OF THE CLERIC REGULAR OF THE SACRED FOOT OF THE CROSS AND THE PASSION OF OUR LORD JESUS CHRIST.

The present Editor of the annual Calendar for the performance of the

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Divine Office and for sacred celebrations, for the use of the Congregation of the Cleric Regular of the Sacred Foot of the Cross.

[*Latin ed. p. 437*]

437 APPENDIX VI. To the Sacred Congregation for the Rites, the following questions were humbly submitted for appropriate resolution concerning the Passion of Our Lord Jesus Christ:

Question I. Since the aforementioned Congregation has been granted the privilege of the Votive Office of the Seven Sorrows of the Blessed Virgin Mary, which may be celebrated on any Sabbath of the year, unless impeded, it is asked whether the prayer in the Mass should correspond to the prayer of the Office itself, or whether another prayer should be used, as indicated in the second place in the Roman Missal?

Question II. When the Votive Office, which concludes with proper hymns, coincides with a Double, it is asked whether said conclusion should take place in the hymn of the Completor of the same day on which the Votive Office was completed?

Question III. Do all those of the clergy who reside in Rome, but do not use the Calendar and Proper Office for the clergy of that city, have to recite the Votive Office of the Saints Peter and Paul, Apostles, on the third feria (weekdays) that are free, or another Office granted to the Apostles of the entire Church?

Question IV. When the First Sunday after the Octave of the Saints Peter and Paul, Apostles, coincides with a Lesser Double, should this take precedence over the feast of the Commemoration of all the Supreme Pontiffs of the Holy Roman Church, which is also attached to a Lesser Double on the First Sunday not impeded after the aforementioned Octave?

Question V. Can the movable feasts of the Nativity and Purification of the Blessed Virgin Mary, which are attached to Sundays, be transferred?

Question VI. In the Office of Saint Hilary, Bishop, and in the Lessons I of the Nocturn of the Church Doctor, are the readings from Scripture, or are they from the common wisdom of the Doctors?

And the Sacred Congregation, after hearing the report of the undersigned Secretary, and after hearing the opinion of another of the Masters of the Apostolic Ceremonies, decided that the aforementioned questions should be answered as follows:

To I. The prayer of the Office should be recited.

To II. Affirmative.

To III. Affirmative for the first part, Negative for the second.

To IV. Negative.

To V. They cannot be transferred without a dispensation.

To VI. The Lessons I of the Nocturn are from Scripture.

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And thus it was decided and ordered to be observed.

May 9, 1884.

NICOSIA.

The Most Reverend Lord Bernard Cozzucli, today Bishop of Nicosia.

The following questions were humbly submitted for appropriate resolution:

Question I. Can a Bishop permit all the functions of the Greater Week to be performed in all churches in which the Most Holy Sacrament is reserved, even if the parish priest, to whom those churches are subject, is unwilling?

[*Latin ed. p. 438*]

438 APPENDIX VI. Question II. Whether on the fifth day of the week, during the celebration of the Lord's Supper, Parishes, besides the relative right pertaining to the fulfillment of the Paschal precept, can claim other rights concerning foreign churches existing within their parochial jurisdiction? And the Sacred Congregation, after hearing the report of the undersigned Secretary, and the opinion of another of the Masters of the Apostolic Ceremonies, having maturely considered the matter, the proposed questions were answered as follows: To I. Affirmative, provided that the sacred functions are performed at different hours, so that the gathering of the faithful to the Parish Church is not hindered. To II. As provided in the first. And thus it was answered. On May 9, 1884. ORDER OF MINOR FRANCISCANS. The Reverend Father Bernardinus from Porto Romano, Minister General of the entire Order of Minor Franciscans, humbly presented the following to the Sacred Congregation: In the Convent of St. Columba, of the Order of Minor Franciscans, the feast of the titular saint is always celebrated on December 31st. Formerly, on that same day, the feast of St. Sylvester was also celebrated in the same manner. However, according to the new general rubrics concerning the reduction to a simple form of the double rite, it is no longer possible to celebrate the feast of St. Sylvester in the simple form. Therefore, the question arises as to how the feast of St. Sylvester should be observed in the aforementioned Convent. Hence, the same Sacred Congregation humbly submitted the following questions for appropriate resolution: Question I. Whether, in this case, the feast of St. Sylvester must be perpetually omitted, or not? Question II. Whether it can be anticipated to the first free day before December 31st, which in the calendar of the aforementioned Convent is December 9th? Question III. Whether it can be celebrated on December 30th with the commemoration of the Lord's Day within the Octave of the Nativity of the Lord? Question IV. Whether finally, the feast of the titular saint can be transferred to December 30th, and the feast of St. Sylvester can remain on December 31st? And the Sacred Congregation, after hearing the report of the undersigned Secretary, and the opinion of another of the Masters of the Apostolic Ceremonies,

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answered all the proposed questions as follows: The feast of St. Sylvester of the Sacred Congregation shall be transferred to December 30th, with the commemoration of the Lord's Day. And thus it was answered, and it was ordered to be observed. On May 9, 1884. SALERNO. The Chapter of the Metropolitan Church of Salerno humbly submitted the following two questions for appropriate resolution:

[*Latin ed. p. 439*]

"IX. With the utmost humility, the following questions were submitted:

I. From ancient custom, the Canons of this Church, on the Feast of the Annunciation of the Blessed Virgin Mary, even if it falls within the season of Lent, are accustomed to use choral vestments of the color red. The question is, whether, considering the more recent regulations concerning the feast of Saint Joseph, Confessor, and Spouse of the Blessed Virgin Mary, vestments of the color violet or red should be used in this case?

II. According to the Capitular Constitutions, the same Canons are obliged each year to sing a Mass for the repose of the soul of their Archbishop who most recently passed away. However, the Most Reverend Archbishop of Guadalupe, the predecessor of the present Archbishop, died after having delivered the news to this Archdiocese, but without having yet received the title or charge of another See. The question is, whether the aforementioned Solemn Mass should be celebrated for the soul of the deceased predecessor Archbishop, or for the deceased official of Guadalupe, who died in the aforementioned place?

And the Sacred Congregation, having heard the report of the undersigned Secretary, and having also heard the opinion of another Master of the Sacred Ceremonies, after mature deliberation on all matters, considered it fitting to respond to the questions posed as follows:

To I. It is permissible, if the circumstances and reasons warrant it, to use the color red.

To II. The anniversary should be observed for the Most Reverend Archbishop of Guadalupe.

And thus it was written. On May 9, 1884.

His Holiness Pope Leo XIII, having received a faithful report from the undersigned Secretary concerning the first question, deigned graciously to approve, so that, on the Feast of the Annunciation of the Mother of God, as well as on the Feast of Saint Joseph, Spouse of the same Blessed Virgin, both occurring within the season of Lent, the aforementioned may be permitted. Contrary opinions notwithstanding.

On May 15 of the same month and year.

CAURIEN. The present Master of the Sacred Ceremonies of the Cathedral Church of Caurien, humbly submits the following questions to the Sacred Congregation for consideration:

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I. The readings from the Book of Maccabees, which are assigned for the Sunday of October and the two following weekdays, are often not read, because of the feasts of Saint Narcissus and Saint Fructuosus, which are of double minor rank, and which have their own readings for the first nocturn, while the others have readings from the common office. The question is:

1. Can the aforementioned readings from the Book of Maccabees be read on the feasts of double minor rank, which have assigned readings for the first nocturn, either proper or common?

2. If only one day remains free for the readings of the Sunday of October, should the readings of the second and third days following also be read? ”

[*Latin ed. p. 440*]

440 APPENDIX VI. Can the readings be read on that very day, namely, the first reading of each day?

II. Concerning the Office of Votive Masses of Saint James the Apostle, which is found at the end of the book of the Holy Fathers of Spain, and which was recited in all the Kingdoms of Spain by order of Pope Clement IX, granted on July 23, 1647, on the second day of each week, without impediment, and which is recited today on the third day of the Office of Votive Masses of the Holy Apostles, according to the Decree of the Holy Roman Church of January 24th of the past year, the question is asked: Which readings should be read for the first nocturn in the Office of Votive Masses of Saint James during the season of Lent?

III. In the edition of the Offices of Votive Masses for the year, published by the Holy Roman Church on August 14th of the past year, for the fifth day, the Office of Votive Masses of the Most Holy Eucharist is noted ”as in the Appendix of the Roman Breviary.” However, since nothing is said in this Appendix concerning the readings for the first nocturn during Lent; and in various editions of the Roman Breviary, different readings are noted for the third nocturn during the months of January, February, March, and April, the following questions are asked: 1. During the season of Lent, in the Office of Votive Masses of the Most Holy Sacrament, which readings should be read for the first nocturn? 2. Which readings should be read for the third nocturn in the Office of Votive Masses of the Most Holy Sacrament during those months?

IV. Since in the Office of the Immaculate Conception, granted for the entire year by the Holy Roman Church by Decree of July 5th of the past year, to be recited on each Saturday, without impediment, outside of the seasons of Lent and Advent, from the 17th to the 23rd of December inclusive, no readings are noted for the first nocturn during Lent and on the Saturdays of the Four Seasons, the question is asked: Which readings should be read for the first nocturn in the Office of Votive Masses of the Immaculate Conception, during the season of Lent and on the Saturdays of the Four Seasons?

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V. Whether, by virtue of the Breviary of Our Lord Pope Leo XIII, of July 28, 1882, the Decree of the Holy Roman Church of March 1, 1685, Ord. Canonie. Regul. Lateranensium, is considered suppressed, so that a lesser double feast (of a Saint who is not a Doctor) or a semi-double feast occurring in a leap year on February 25th, in which then the feast of Saint Matthias is celebrated, is no longer transferred to the immediately following day, reducing it to the rite of a simple feast, whether a lesser double feast or a semi-double feast occurring?

VI. It is prohibited by the Holy Roman Church to use incense in a Mass celebrated without ministers. However, in this Diocese, and more or less in other Dioceses of Spain, there is a shortage of priests, so that very few priests can be found in the parish churches (especially in rural areas) to celebrate a solemn Mass with ministers, but only a chanted Mass.

[*Latin ed. p. 441*]

x vi. It is asked whether, solely for the priest, and in that case, the use of incense can be permitted according to a custom almost unmemorable, which could not be suppressed without causing offense and scandal to the people; and whether, at least, where this custom is tolerated, the use of incense can be permitted in Masses that are sung without sacred ministers, if such ministers cannot be found?

Dubium VII. According to the Decrees of the Holy Roman Church, all are bound to obey the Masters of Ceremonies in matters concerning the divine worship, and in the exercise of their office, they are to be directors, not servants, of the Chapter*. It is therefore asked: Are the Masters of Ceremonies bound to seek the consent and approval of the Chapter, so that they cannot put into effect in the Cathedral Church any decree of the Holy Roman Church concerning the divine worship, before obtaining said consent and approval? And, if the answer is negative: Can the Chapter, under the pretext of some custom, even one that is ancient, or by presuming a privilege, defend itself against the due observance of decrees, which, as Ministers of Ceremonies, they are to remove in order to eliminate customs that are contrary to the Rubrics or Decrees?

Dubium VIII. When funeral Masses are celebrated in the absence of the body, due to civil prohibition or contagious disease, but not yet buried, it is asked: Can the body be retained as if it were physically present, so that the funeral Mass of the 441st day after death can be permitted, on those days when this Mass is permitted with the body physically present?

Dubium IX. In this Cathedral Church, Masses for the Dead are sometimes celebrated with the attendance of the entire Chapter, which are nevertheless called "anniversary Masses," although improperly, since they are not based on the day of death; it is asked: Must these Masses be said after the Ninth day, or after the First day?

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The Sacred Ritual Congregation, after carefully considering the following questions, which were previously submitted by another of the Masters of Ceremonies of the Apostolic Ceremonies, has given the following answers:

Ad I. To both parts, negatively, and only the Sunday Readings are to be read in this case, if a feast day falls on that day.

Ad II. In the votive Office of St. James the Apostle during Lent, the Readings are to be read in the first nocturn, as follows: "Let us consider the man, as on a feast day."

Ad III. and IV. In the first nocturn, the Readings from Scripture for the day of the feast are to be read, as already provided in the Roman-Ratisbon edition of 1883: for the third nocturn of the votive Office of the Most Holy Sacrament, in January and February, as on Feria VI within the Octave; in March and April, as on Saturday.

Ad V. By a Brief of July 28, 1882, it is not to be considered suppressed, the statement of the Decree in...

[*Latin ed. p. 442*]

APPENDIX VI. 442. Concerning the Rule of the Order of Regular Canons of the Lateran Basilica. It is asked whether the feasts which take place on the days fixed for votive Masses in the common year, namely the 24th, 25th, 26th, 27th, and 28th of February, or in a leap year the 25th, 26th, 27th, 28th, and 29th of the same month, prevent the celebration of the Offices of the Saints on those days. Question II. Can votive Offices be cited in the Feast of Saint Canute the King (on the 19th of January), which is a semi-double rite, at will? Question III. In the Vespers of the Feast of the Passion of Our Lord, which occur within the Octave of Easter, must the Commemoration of the Most Holy Eucharist be performed? Question VIII. Affirmative, and the votive Office may be recited on the Feria preceding [Palm Sunday]? And the Sacred Congregation, having heard the report of the undersigned Secretary, and having considered the opinion of another of the Apostolic Masters of Ceremonies, and having proposed the questions duly, decided as follows: In votive Masses of the Holy Apostles Peter and Paul, the "Omnium Sanctorum Apostolorum" prayer is said by all. Questions II and III: Negatively. And thus it was written and declared. Rome, July 18, 1884. RATISBONEN. The Reverend Father Georgius Schober, Priest, of the Congregation of the Most Holy Redeemer, reported (1) Tome III, 657, of these ephemerides.

[*Latin ed. p. 443*]

The following doubts, for opportune resolution, were humbly submitted by the Authors and Censors of the Episcopal Liturgical Commission of Ratisbon:

Doubt I. The liturgical authors do not agree on whether, on the feast

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of the Precious Blood, the Commemoration of the Holy Sacrifice should be performed, whenever a solemn Mass is celebrated before It is exposed: some deny it, because in the Prayers of the Holy Sacrifice, mention is made of the Blood of Our Lord Jesus Christ; others affirm it, citing the Decree of the Holy Roman Congregation of July 7, 1877, in a certain Society of Priests of the Most Holy Sacrament, to the first point, because the Mass does not concern the same mystery. Should the Commemoration of the Holy Sacrifice be performed on this feast?

Doubt II. Since the Roman Pontifical does not clearly state which acts and ceremonies must be repeated when several altars are consecrated in the same church, the following is asked: 1. Must the Bishop, after the unction and the closing of the sepulcher of the first altar, begin again from the "Deus qui in omni loco" prayer when he proceeds to the second altar, and must he repeat this prayer as many times as altars are consecrated? 2. Must the Bishop also intone the antiphons "Sub altare Dei" and "Sub altare Dei audivi" as many times as altars are to be consecrated, and must the singers sing them? 3. Does the same repetition apply to the prayer "Deus qui ex omnium cohabitatione"?

And the Sacred Congregation, after carefully considering the report of the aforementioned Secretary, and also the fervent request of another from the Masters of the Apostolic Ceremonies, having considered all matters maturely, decided to respond to the aforementioned doubts as follows:

To I: Negatively.

To II: Affirmatively, in all cases.

And thus it responded and ordered that it be observed.

July 18, 1884.

VINTIMILIEN.

The Most Reverend Thomas Reggio, the present Bishop of Vintimili, considering the serious questions raised by the Prefect and Canons of the Collegiate Church of Saint Syra in the city of Sancti Romuli, where an ancient collegiate church exists, whose Prefect is also the parish priest of the same city, so that he has the entire care of souls, and desiring that all things be properly arranged, deemed it worthwhile to request the solution of the following doubts from the Holy Roman Congregation:

Doubt I. On Sundays and feast days, even solemn ones, on which a sermon is given from the diocesan synod, should the Prefect give the sermon, after the choral functions have been completed, or rather, during the solemn Masses, or before the evening Benediction of the Most Holy Sacrament?

Doubt II. Since, from the charter of the erection of the Collegiate Church

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of Rulla...

[*Latin ed. p. 444*]

444 APPENDIX VI. Whether it is permissible for the Canons of the aforementioned Church to use the cope with ermine, when this usage has fallen into disuse for eighty years, and now, only the current Prefect, three years ago, has used the cope, without anyone objecting; it is asked whether he is lawfully able to use this privilege, while the other Canons do not use it. Doubt III. In Rogations and other similar processions, in which the choral vestment is usually worn, it is asked whether a stole should be worn by the Prefect who does not wear the alb and pluvial, as the Ritual seems to indicate, even if the contrary custom prevails? Doubt IV. In order to satisfy the piety of the people, it sometimes happens that Mass is celebrated before the Most Holy Sacrament exposed, and after Mass, a blessing is imparted with the same; also, that in honor of the Virgin Mary, a supplication is made with several candles lit, while the Divine Sacrifice is being performed. It is asked whether these functions, which are ordinarily performed by the Prefect, offend against the prescriptions of the Rubrics? Doubt V. When some of the Canons of the aforementioned Church strive to assist the Prefect in all parochial offices, and at times they serve in the ministry of the altar, can they lawfully wear the canonical habit, according to the established custom? And the Sacred Congregation, in response to the aforementioned report of the Secretary, after a careful inquiry made beforehand to one of the Masters of the Apostolic Ceremonies, considered it fitting to respond to the questions posed as follows: To I. The custom should be maintained. To II. No, since the privilege has been granted to the College, not to individuals. To III. The Decrees should be observed. To IV. No, if they are performed properly. To V. No, and the custom in this case should be completely abolished. And thus it responded, and it was ordered to be observed. July 18, 1884. OF THE ORDER OF SAINT CLARE OF URGELL. Father Franciscus Roca, Priest and Confessor of the Nuns of Santa Clara in Balaguer, in the Diocese of Urgel, in Spain, presented the following to the Sacred Congregation: In the Monastery of Santa Clara in Balaguer, there exists an ancient custom whereby, on the feast of the same Saint, the Most Holy Sacrament is exposed in such a way that the ostensorium is held by the right hand of the image of the Saint herself, and therefore, he humbly requested the following from the same Sacred Congregation: 1. Whether the aforementioned custom of the Clares nuns is legitimate? 2. Since the answer is negative, it is humbly requested that this special grace be continued.

[*Latin ed. p. 445*]

445 f2. And concerning whether, in the affirmative sense for the first part, but in the negative sense for the second, the prayer to be recited should be

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"God grants forgiveness" or one of the two prayers placed at the end of the Missal for the benefit of the departed, namely, "God, to whom it is proper," or "Souls of the departed, we beseech Thee," the Sacred Congregation responded: To I. Negatively. To II. It does not matter; and let a decree be issued in Lisbon on April 23, 1875. (1) On August 2, 1884, VÍGEVANEN. The parish church of Saint Mary Major in the town of Laumelli, Diocese of Vigeva, requested a solution to a doubt from the Sacred Congregation concerning Doubts, namely: Doubt I. According to the decree of July 13, 1883, in Petrocoricen, in daily Masses for the Dead, which are sung in most parish churches without ministers by the sole celebrant, is the single prayer to be said? Since the Sacred Congregation clarified on December 16, 1828, and on February 18, 1843, that it is permissible to have this custom, if it exists, of reciting the aforementioned Psalm with the verse "Grant them eternal rest, etc.," and since this conclusion contributes greatly to exciting greater piety and devotion, and to the souls of the faithful departed, detained in purgatory, hence the question is asked: Whether, when it is not present, the custom of reciting the aforementioned Psalm can be introduced? Hence it is asked: 1. Whether it should always and in every case be the single prayer to be said in these daily Masses, even when only for those departed for whom the parishioners are willing to offer alms within the year, or whether in this case three prayers should be said from the Missal, as has already been stipulated for daily Masses read?

And the Sacred Congregation, in relation to the aforementioned, through the writing of the undersigned Secretary, after careful consideration by all, decided to write as follows:

To I. The decree relating to Petrocoricen should be observed. (2) And in case (1), reference is made to Vol. XII, 532 of these ephemerides. (2) This decree has already been referred to in this volume, page 308.

[*Latin ed. p. 446*]

446 APPENDIX VI: The prayer "Deus veniae largitur, etc." is to be said. Regarding II. Negative. And thus it was decreed and ordered to be observed. August 12, 1884. BERGOMEN. Reverend Father Canon, Primicerius of the Cathedral Church of Bergom, with the consent of his Most Reverend Bishop, humbly submitted the following questions to the Sacred Congregation of Rites for a suitable solution:

Question I. Since the General Decree of the Most Holy Universal Inquisition, dated August 31, 1881, concerning the marriage blessing, prescribes that the same blessing be imparted outside of the feast day to those spouses who have not received it for any reason, and this contradicts several previous prescriptions given by the Sacred Congregation of Rites, the following is asked:

1. After the feast day has passed, in order to impart the aforementioned marriage blessing to the spouses, is the Mass for the Spouses to be cele-

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brated, and will the same Indult (dispensation) apply to them as it does to others who receive the marriage blessing on a non-feast day? Or

2. Should a day be chosen for the celebration of the Mass on which votive Masses are permitted? Or

3. Is the Mass to be celebrated which occurs, and in which the commemoration for the spouses is made, and the blessing imparted, which is found in the Missal after the Our Father, and those which are found after the "Placeat"? Or

4. Will the aforementioned spouses, who have not received these blessings for any reason, be required to be present when a Mass is celebrated for new spouses outside of the feast day?

Question II. By Indult of the Apostolic See, the feast of the Relics or Saints, whose bodies or relics are kept in the churches of the Bergom diocese, is observed on the first day of May, under a double rite, with no clause added; similarly, on Sunday, July 2nd, under the same rite, the feast of All Saints of the Roman Church and the Supreme Pontiffs is observed. The question is asked whether the Office fixed for these Sundays should be transferred, and whether the recitation of the Saints' Relics or the Saints' Supreme Pontiffs should be recited.

Question III. Bouix, in his Treatise on Chapters (Part 3, Chapter I, sections I. Punct. 11, no. 7), states: "When the Bishop enters the Cathedral pontifically, the aspersorium (sprinkler) is to be offered to him by the highest dignity of the Cathedral Chapter, as has been decided many times. But when he enters another church, with the Cathedral Chapter present, the aspersorium is not to be offered by the highest dignity of the Cathedral Chapter, but by the superior of the church to which he is entering; and this seems to have been decided by the Sacred Congregation of Rites." Therefore, the question is asked whether...

[*Latin ed. p. 447*]

X. Whereas the aforementioned sentence of the Holy Roman Church derogates from the decrees given on January 18, 1653, and April 6, 1680, in which it was declared: In the customary processions held on the feast of Saint Mark and during Rogation days, should the aspergillum be offered by the more distinguished member of the Cathedral Chapter when the Chapter proceeds solemnly and in canonical vestments? The same Holy Congregation, after hearing the report of the undersigned Secretary, and after mature deliberation by all of the Masters of the Sacred Ceremonies, considered it fitting to respond to the following questions: To I. It is sufficiently provided for by the aforementioned General Decree, in which it is stated that Mass is to be celebrated in this case according to the rubrics. To II. Negatively. To III. Negatively, and the decrees are to be observed as appropriate. And thus it responded, declared, and ordered to be observed.

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August 18, 1884. LÜNEN. SARZANEN. AND BRUGNATEN. The present Vicar General of the Diocese of Lünen, Sarzanen, and Brugnaten, humbly submitted the following questions to the Holy Congregation of Rites: Question I. Are the Offices of the Cathedral of Saint Peter at Antioch, of Saint Gabriel the Archangel, and of Saint Benedict the Abbot, which enjoy the privilege of a double rite, to be superseded by the Offices of the Mysteries and Instruments of the Lord's Passion, when these are celebrated under the same rite? Question II. Does the prohibition still remain in force of celebrating Mass in private oratories on the feast of the Annunciation of the Blessed Virgin Mary, and also of singing a Mass for the Dead in the presence of a corpse on the feast of the Nativity of Saint John the Baptist, which days were suppressed in the calendar by an Apostolic Brief? And the same Holy Congregation, after hearing the report of the undersigned Secretary, and after mature deliberation, considered it fitting to respond to these questions as follows: To I. Negatively, in view of the Decree of August 6, 1831, which grants those Offices. To II. Affirmatively. And thus it responded and declared. August 18, 1884. NAX1EN. The Most Reverend Lord Joseph Zaffino, Archbishop of Naxien, humbly requested a solution from the Holy Roman Church to the following questions: Question I. Is it permitted for a Bishop, who is wearing a large cope and is present at a solemn Mass before the Blessed Sacrament is exposed, to customarily offer the blessing to the people before the last Gospel of the Mass, as is the custom in the Metropolitan Church of Naxien? Or not? Question II. Is it fitting that a Bishop, wearing a cope or a raincoat,

[*Latin ed. p. 448*]

APPELLATION IX, v. 448: Regarding the performance of sacred functions, in which a blessing is given by the priest celebrating Mass, along with the Most Holy Sacrament of the Eucharist, after these things have been completed, is the episcopal blessing to be imparted to the people, as is the case in some Greek dioceses? And the Sacred Congregation, after considering the report of the undersigned Secretary, and after hearing the opinion of another of the Masters of the Apostolic Ceremonies, after mature deliberation, decided to respond as follows: To I. The blessing in the solemn Mass, even when the Most Holy Sacrament is exposed, should be given not by the celebrant, but by the Bishop, wearing a cope or pluvial, seated on his throne, present at the same Mass. To II. The episcopal blessing is entirely unsuitable in this case. And thus it responded. On September 12, 1884. NERITONEN. The Most Reverend Lord Michael Mautone, the current Bishop of Neritonen, in the Holy Roman Church, reported that, due to the suppression of religious families in the City of Neritonen, the Brothers of the Order of Friars Minor of Saint Francis, of the Reform, although they cannot reside in the monastery attached to their own church, under the title of Saint Anthony, nevertheless perform the sacred functions there, and

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even more so because the sodality of the Third Order of Saint Francis, and a pious association under the invocation of the Sorrowful Mother of God, have their seat there. However, some doubts have arisen regarding the funeral rites, namely, to whom the right belongs to celebrate the funeral rites in that church, whether to the Brothers, whose church it is, or to the Parish Priest and the Chapter of the Cathedral Church, or even to the Religious themselves, since the bodies of those belonging to these sodalities are therefore brought into the church of Saint Anthony. Therefore, the same Most Reverend Bishop humbly requested the following doubts to be resolved by the same Sacred Congregation: Doubt I. To whom does the right belong to celebrate the funeral rites in the aforementioned church, whether to the Brothers, whose church it is, or to the Parish Priest and the Chapter of the Cathedral Church? Doubt II. After the funeral rites have been performed in the same church according to the regulations, can the same Religious (without the cope and stole) and other confreres carry the body to the cemetery, when the Parish Priest has not been invited by the parents of the deceased to do so? And the same Sacred Congregation, after considering the report of the undersigned Secretary, and after carefully considering the written opinion of another of the Masters of the Apostolic Ceremonies, decided to respond to the doubts presented as follows: To I. In this case, the right to celebrate the funeral rites belongs to the Religious Rector of the Regular church, with the rights of the Parish Priest being preserved. To II. Affirmative, under the condition that the priest, from among the Religious, wears the cope and stole; provided, however, that this does not conflict with any particular diocesan prescription. And thus it responded, and it was ordered to be observed. On September 12, 1884.

[*Latin ed. p. 449*]

449 The Bull by which the Diocese of Lugano in Switzerland is founded. LEO, SERVANT OF THE POPE, TO THE SERVANT BISHOP, FOR PERPETUAL REMEMBRANCE OF THE DIVINE MATTER. To the entire Catholic Church, the Roman Pontiff, who, by the authority entrusted to him by the Lord over his flock, diligently directs his paternal solicitude for the proper guidance of souls entrusted to him, and for their spiritual good and benefit in the Lord, sometimes arranges certain matters which he deems most salutary. Indeed, the arrangement of spiritual affairs in the Helvetic region of Ticino, which the Apostolic See had long been pursuing, was such that, for the advancement of religion and the benefit of souls, it was necessary that this be established and made firm and lasting through a proper ecclesiastical structure. Therefore, it pleased Divine Providence to grant this to Our care through a solemn agreement held on the sixteenth day of the past month of March, between the Venerable Brother, Our Legate of the Apostolic See, Dominic Ferrata, titular Archbishop of Thessalonica, and the Apostolic Nuncio to Brussels,

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and the representatives of the Supreme Federal Council of Switzerland, and then solemnly ratified and signed by the Supreme Federal Council of Switzerland on the fourth day of the following month of July by Our beloved Son, the Vice-President of that same Federal Council, and by the Chancellor of the Confederation; and by Ourselves, on behalf of the Holy See, on the thirteenth day of the same month. Moreover, the favorable outcome of this difficult undertaking is largely due to the generous and willing spirit with which the Supreme Council of Switzerland approached the matter, which greatly increases Our paternal love and concern for the Swiss people. Furthermore, the religious piety of Our beloved sons, the Canons of the Metropolitan Church of Milan, who, preferring the spiritual benefit of the people of Ticino, and without any hesitation regarding their own rights and privileges, readily agreed to this, has added to the joy of this event.

[*Latin ed. p. 450*]

450. We have learned that, by right, they have enjoyed peace for many centuries, namely the Counts of the three Ticini valleys, in providing for fifty-four of those parishes and in conferring other ecclesiastical benefices; but indeed, afterwards, both in words and in writing, they completely abandoned all of this care. Therefore, having removed all difficulties, and having duly considered all that is to be observed in such matters, desiring to provide, as far as is in us, for the greater benefit and advantage of the souls of the Ticinese region, and also wishing to absolve all and each of those to whom these Our letters are favorable from any excommunications, suspensions, and interdicts, and from other ecclesiastical sentences, censures, and penalties, if any such are attached to them, and to consider them absolved and to be absolved, for the purpose of achieving the aforementioned, We decree the following, with Our own initiative and with certain knowledge and with the fullness of Apostolic power:

First, the parochial and collegiate church of Saint Lawrence, now located in Lugano, We establish by Our Apostolic authority as a cathedral, and We declare it to be such, so that from this time forward it shall be called a cathedral, and shall enjoy all the honors, prerogatives, rights, privileges, graces, indulgences, and other things which the Basle church enjoys by common law.

In the aforementioned church of Saint Lawrence, We establish and perpetually found a Bishop's seat and chair for one episcopal administrator, who, as an apostolic administrator of the Holy See, immediately subject to the Holy See, will govern the entire Ticinese region, except for those who may enjoy a special exemption. Therefore, We subject to his jurisdiction the one hundred and sixty-two parishes which now constitute that region, of which one hundred and sixty-two have a permanent pastor, while the others, which are entrusted to removable priests, are designated by the

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name of vicars, although in them also all parochial duties are exercised.

Furthermore, the apostolic administrator of Lugano will be chosen by the Apostolic See, with the advice of the Bishop of Basle, from among the priests subject to the jurisdiction of Lugano; otherwise, the provisions which were established concerning the participation of the people of Lugano in the election of the Bishop of Basle in the convention of the sixteenth day of the month of March of the year of Our Lord one thousand eight hundred and eighty-eight, shall remain in force, if it pleases those concerned. Now, the Apo-

[*Latin ed. p. 451*]

BULLA 451. That same [official] shall remain, who was appointed by the same Apostolic See for this purpose on the twentieth day of the month of September of the past year, one thousand eight hundred and eighty-seven, namely, our venerable Brother Vincent Molo, titular Bishop of Callipolis. Furthermore, the Lugano Cathedral, thus erected and established, we join and unite perpetually with the Cathedral Church of Basel, preserving full equality of rights; and therefore, the Ordinary shall use the title of Bishop of Basel and Lugano. Moreover, we wish the fourth article of the convention of the first day of September of the year of our Lord one thousand eight hundred and eighty-four to remain in force. However, since the Ticinensis region, by reason of its own administration, is concerned with the aforementioned matter, we wish that it be obligated to contribute something, either for the expenses of the Ordinary of the Diocese, or for the general expenses of the administration of the diocese. Thus, the Cathedral Church of Lugano, being joined and united as stated, will always be under the administration of the Diocese of Basel, with the exception of the right, of which mention was made above when speaking of participation in the election of the Bishop of Basel. Furthermore, the translation to practice and the full application of the present Convention do not extend to the provisions of the Convention of the twenty-sixth day of March of the year of our Lord one thousand eight hundred and twenty-eight, as foreseen above in the same place, nor do they affect the use of the rights derived therefrom. Indeed, with regard to the endowment of this aforementioned Apostolic Administration, it shall consist of no less than ten thousand seven hundred francs, of which twelve thousand francs shall be given to the Administrator, and the remaining five thousand francs shall be used for the erection of chairs of theology and philosophy for the instruction of clerics, both of the Roman and Ambrosian rites, according to the fourth article of the Convention of the twenty-third day of September of the same year of our Lord one thousand eight hundred and eighty-four. When the office of Administrator is vacant, whatever revenues accrue to the aforementioned Administration shall be divided into two equal parts, and shall be given to the new Administrator and to the Vicario Capitular. Furthermore, the

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Apostolic Administrator of Lugano shall diligently observe and protect the Catholic Apostolic Roman religion, together with its rights and privileges, with which it uses and enjoys by divine and canonical sanction; he shall take the utmost care that nothing, in any way, may impair or violate them.

[*Latin ed. p. 452*]

452. Decrees are issued concerning errors contrary to the faith and practices harmful to morals. He, however, will maintain communion with his clergy and people, and with the Apostolic Holy See, without being subject to any impediments, and without encountering any obstacles. Furthermore, he will be free to appoint vicars, advisors, and assistants for the administration of his diocese, choosing suitable men from among the clergy; and he will also be able to admit, and to promote to the clerical state and to the sacred orders, those whom he judges necessary or useful to his diocese, and, conversely, to prevent from receiving orders those whom he deems unworthy. He will also be able to order public prayers and other pious works, when it is required for the good of the Church, or for the benefit of the people; and he will be able to determine sacred celebrations and pilgrimages, and to regulate funerals and other sacred functions, observing all canonical prescriptions. He will also be able to convene and celebrate a Synod, and to publish its acts. Furthermore, we wish that the apostolic Lugano administrator have a cathedral in his own cathedral church, with a chapter, its treasury, table, seal, and all other cathedral and pontifical insignia, privileges, honors, and preeminences, as well as with all the rights of cathedral churches, with which the Bishop of Basle uses and enjoys in his own cathedral. Therefore, since the aforementioned collegiate and parish church of Saint Lawrence is to be raised to the dignity of a cathedral, as has been stated above, we also, with the same apostolic authority, permanently elevate the chapter of canons serving that church to the dignity of a cathedral chapter. Therefore, in addition to the theological faculty, which already exists, for explaining the Catholic doctrine to the people, we also order the addition of a penitentiary, according to ecclesiastical prescriptions, for the expiation of the souls of the faithful. The aforementioned chapter will consist, as is the case now, of ten resident canons, of whom five will be burdened with the care of souls, five will be free from that burden, while the care of souls will always remain with the chapter; and all will use the same rights and have the same suffrage in the acts of the chapter. As the endowment of the apostolic administrator is twelve thousand francs, as stated above, so the endowment of the aforementioned chapter will be eight thousand francs, of which, however, the differences, according to custom, range from nine hundred fifty francs to seven hundred. Since it seems fitting that the aforementioned church, being raised to the dignity

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of a cathedral, should exhibit its splendor, as is fitting...

[*Latin ed. p. 453*]

BULLA 453: In the cathedral chapter, a greater number shall be maintained, and this is hindered by the lack of clergy, which does not allow for the continuous presence of several priests in the same place; therefore, following the custom said to be received in Helvetia, We grant the power to the aforementioned chapter to admit priests residing elsewhere, and to grant them the same rights and privileges as those residing there. Furthermore, We grant to the same apostolic administrator the power to add eight of these canonical benefices, which they call "extra," to the aforementioned cathedral chapter, with the granting of rights and privileges. And since each chapter usually has its own constitutions and ordinances, We likewise grant to this chapter, in the newly established cathedral, the permission and the faculty to draw up its own, provided that the norms of the apostolic constitutions and the Council of Trent are observed; however, these shall be subject to the judgment and examination of this apostolic administration, and shall not have any legal force unless they have been previously approved and sanctioned by it. Regarding the distribution of choral benefices, these shall be made, as the established laws determine. Furthermore, with regard to the smaller canonical colleges—Bedinzona, Locamo, Balerna, and Agno—we declare that nothing shall be changed. Moreover, the election and canonical institution of suitable parish priests, with the observance of the laws that must be observed, shall remain free to the apostolic administrator of Lugano. However, since their endowments are so small, that even with added contributions, they scarcely reach one thousand five hundred francs, We earnestly urge the administrator himself to spare no effort to obtain some subsidy for them, either from the Ticino region or from others to whom it may be more appropriate. As for the seminaries, two are currently maintained; one is in Lugano, called after Saint Charles, to which the Ticino government, as mentioned above, has allocated five thousand francs for the establishment of chairs of philosophy and theology, for the instruction of students, whether of the Roman or Ambrosian rite, in those disciplines; which, if diligently taught according to the mind of the Angelic Doctor, will undoubtedly bear abundant fruit. The other is the college, whose income scarcely reaches five hundred francs; to which are added another one thousand two hundred francs established by the Ticino government from six thousand francs of the fruits of debts for assets seized by the treasury in the year of Our Lord 1851, and which have not yet been paid; so that only one thousand seven hundred francs constitute the seminary's endowment: the remaining four thousand eight

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hundred francs...

[*Latin ed. p. 454*]

454. We decree that sixteen young men, from the first year of the gymnasium to the completion of their theological studies, shall be assigned to the cultivation and improvement of the gardens: this, of course, will benefit both the gardens and the seminary. Furthermore, there are nine other students who are supported with a pension of three hundred, or three hundred and fifty francs each; and, if it were a question of cultivating a noble young man from Ascona, the necessary pension could be requested from the Pontifical Seminary of Ascona. In addition to these, there are two scholarships, now called "Helvetic," granted in the archiepiscopal seminary of Milan, and one in Pavia, and two in the College of Urban in Rome, requested by the late Bishop Eugenio Lâchât. Furthermore, a house located at number 404 on Via Nassa has been provided, and to the great credit and never-ending praise of this prelate, compared to his own care and to the Apostolic administration, and there the Apostolic Administrator of Lugano will reside with his curia, or offices pertaining to it; and if an expansion is needed, it will be prepared in the adjacent houses belonging to the same Apostolic Administration, which will connect this building with the seminary. What is most important to Our mind is that the institution of Catholic youth be strictly enforced in all schools, whether public or private, according to the norms of Catholic doctrine: therefore, the Apostolic Administrator will, by the authority of his pastoral office, regulate the religious instruction of young people in all educational institutions, so that nothing contrary to Catholic religion or moral honesty may creep into any branch of instruction. Therefore, only Catholic men shall be appointed as teachers or instructors in the Catholic youth organization; but since true faith is as necessary to a teacher as moral honesty, anyone who is found to be deficient in either shall be removed. Books suitable for imparting religious instruction will also be proposed by the Apostolic Administrator himself. If, despite these measures, it should seem that a particular school is not adequately provided for, the aforementioned Apostolic Administrator shall freely appoint a clergyman to instruct the students in the catechism. Furthermore, for the preservation of the Apostolic Administration and of pious institutions, We decree that not only the aforementioned Apostolic Administration, the Cathedral Church, the Chapter, the Curia, the parishes, the seminaries, but also all ecclesiastical and religious institutions, corporations, and pious societies belonging to the same Administration, shall...

[*Latin ed. p. 455*]

BULLA 455, whether already existing or future, shall freely and validly protect both the legitimate possession of their goods of whatever kind, and also the full power and full right freely to acquire, enjoy, and administer

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goods, revenues, and legitimately offered and received donations. We decree that none of these [goods] may be suppressed, or united, or alienated without the intervention of the authority of the Apostolic See, except for the faculties granted to Bishops by the Holy Council of Trent. Moreover, if the good or any utility of this new Apostolic Administration requires any circumscription or diminution, even without territorial compensation, it shall remain free to deliberate with the Government and to decide in accordance with the Apostolic See. Furthermore, if any unforeseen difficulty arises in this new Apostolic Administration concerning ecclesiastical matters, rights, and persons, about which nothing has been established in the present agreement with the Government, it shall be referred, according to the practice of the canons, to the Apostolic See, which will be responsible for declaring, amending, or, after deliberation with the same Government, resolving the matter. Finally, we establish a canonical tax of two hundred golden florins of the Camera [Papal treasury] for each solemn dispatch of Apostolic letters, whenever a new Administrator is appointed, taking also into account any special circumstances, and we order that this be inscribed in the books of the Apostolic Camera and in the College of Cardinals of the Holy Roman Church for the perpetual memory of the matter. In order that, with regard to the Parishes and Vice-Parishes of the Canton of Ticino, which are subject to the Apostolic Administration as stated above in general terms, no ambiguity may arise from any arbitrary Latin version of the names, we enumerate them specifically below, preserving the common meaning of each term: to each will be added the designation of the Vicariate to which it belongs, and the distinction between Parishes with a permanent pastor and those entrusted to a non-permanent priest will be maintained, and the latter are therefore called Vice-Parishes. Therefore, the Parishes which enjoy a permanent pastor are these: [List of Parishes would follow here, but is missing from the provided text]. Thus established, we decree that these present letters, and everything contained therein, shall always and perpetually remain valid and effective, and shall have and obtain their full and complete effects, and shall never be revoked.

[*Latin ed. p. 456*]

4. Any bull, privilege, or grant, whether by reason of a flaw, or nullity, or by reason of our intention, or by any other defect, shall not be noted, impugned, invalidated, brought before the courts, or subjected to dispute, nor shall any remedy of law, or of fact, or of grace, or of justice be sought against it; nor shall it be revoked, suspended, limited, derogated from, or otherwise altered by us, or by our successors, the Roman Pontiffs, and the aforementioned Apostolic See, under any terms and conditions, or forms, or with any clauses or decrees, even if made with similar intent, even with certain knowledge, even in consistory, for the time being, or to be made in the future; nor shall it be considered to be included in any way; but it

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shall always be excepted from such things, and whenever it is issued, it shall be restored, reinstated, and fully reintegrated to its original and most valid state, and shall be granted anew, at any subsequent date whenever desired, and shall have its full and complete effects and shall be obtained, and shall be considered by all; and thus, and in no other way, shall it be judged and defined by any judges, ordinary or delegated, exercising any authority, or holding any dignity, including the Auditors of the Apostolic Palace and the Cardinals of the Holy Roman Church, even as Legates from the Side, Vice-Legates, and Nuncios of the aforementioned See; and to each of them, any other power to judge and interpret is hereby removed, and it shall be considered invalid and void if anyone, knowingly or unknowingly, should attempt to alter it in any way. Therefore, that all these things which we have established above may fully take effect and be carried out properly and accurately, we entrust and command to our venerable Brother, Vincent Molo, the present Apostolic Administrator, that he proceed to the execution of all and each of the foregoing, and nothing else. Notwithstanding our own regulations and those of the Apostolic Chancery—regarding matters of law not to be waived—and—regarding unions to be committed to parties concerned—and other special or general constitutions and ordinances apostolic, privileges, indulgences, and any other Apostolic letters, granted to any person, in general or in particular, or otherwise, in any way, perhaps granted, approved, confirmed, and renewed in opposition to the foregoing, all of which and each of them, even if for sufficient reason, shall be—

[*Latin ed. p. 457*]

By this Bull, with special, specific, explicit, and individual consideration of these matters and all their circumstances, without mentioning the same through general clauses, or any other expression, or any other refined form, the aforementioned provisions, as if nothing at all were omitted word for word, and the form therein established observed, shall be held to be fully and sufficiently expressed, remaining valid in all respects, and, for this occasion only, with the fullest and most complete, and especially and expressly, for the effect and validity of all and each of the foregoing, we derogate from these series, equally in their entirety, and from all other contrary things whatsoever. We decree that the aforementioned Bishop Vincent and Administrator shall be obliged, within two months from the completion of the execution of these letters, to transmit to the Congregation of our Venerable Brothers, Cardinals of the Holy Roman Church, presiding over consistorial affairs, an authentic copy of any decrees that have been issued for the successful completion of this work, so that they may be kept in the archives of that same Congregation for the perpetual memory of the matter. We also decree that the same faith shall be given to these Letters, even if they are printed, as long as they are transcribed, signed by the hand of a public Notary, and sealed with the seal of someone constituted in

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ecclesiastical dignity, as would be given to them if they were presented or shown in their original form. Therefore, no human being whatsoever shall be permitted to infringe this page of our absolution, erection, declaration, constitution, foundation, adjunction, union, election, precept, faculty, dispensation, declaration, statute, constitution, order, mandate, derogation, and will, or to dare to contradict it with reckless audacity; if anyone should presume to attempt this, let him know that he will incur the wrath of the Almighty God and of the Blessed Apostles Peter and Paul. Given at Rome, at Saint Peter's, in the year of the Incarnation of the Lord, one thousand eight hundred and eighty-eight, on the seventh day before the Ides of September, in the eleventh year of Our Pontificate. (Subscribed) C. DE RUGGIERO, Regent. We testify that this edition is fully in conformity with the original text. Lugano, July 25, 1889. i VINC. Ep. Adm. Ep. (L. S.) Can. S E V. PISONI, Canon. Ep.

[*Latin ed. p. 458*]

458 From the Bulla, it is evident: I. That the Episcopal See, or Diocese of Lugano, is founded and is immediately subject to the Holy See. II. That the Bishop who assumes the title of this Episcopal Chair is the Ordinary of Basel, due to the principal union by which the Diocese of Lugano is united to the Church of Basel; therefore, the same Ordinary is to be honored with the title of Bishop of Basel and Lugano. III. However, by a special pontifical provision, which is most singular in this principal union, the Diocesan Ordinary has no part and no exercise of jurisdiction in governing the Church of Lugano, but rather the governance of this Church is fundamentally and perpetually entrusted to a certain Apostolic Administrator of Lugano, appointed by the Holy See, with the advice of the Bishop of Basel, and from among the priests subject to the jurisdiction of Lugano. IV. When the See is vacant, the governance of the Church of Lugano does not devolve to the Curia or the Bishop of Basel, but to the Vicarious Capitular of Lugano, elected by the Cathedral Chapter of that See, and all things are to be done independently of the Diocesan Ordinary of Basel.

APOSTOLIC LETTER from His Holiness Leo XIII, concerning the founding of a College of Clergy from Bohemia in the City. Those who exercise His vicarious power on earth, who is the way, the truth, and the life, that is to say, as St. Leo the Great says, the way of holy conversation, the truth of divine doctrine, and the life of eternal blessedness, we have considered nothing to be superfluous which pertains to the preservation of the integrity of the faith and the sanctity of morals, and to the more and more firm binding of the bonds which unite the various nations of the Christian name with the Apostolic See. Furthermore, everyone sees how necessary are the efforts, industry, and virtue of those who have dedicated themselves to the service of God's army, and who are devoted to the divine ministrations, and who have consecrated themselves perpetually to God and the Church. - For this

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reason, following the footsteps of our predecessors, and mindful of those things which have been commanded by the holy Fathers concerning the nature and duties of the priestly office, and which have been prescribed by the laws of the most eminent Pontiffs, we strive with all our might to diligently consider the discipline of mind and spirit of young clerics, and we have especially desired that chosen young clerics from abroad...

[*Latin ed. p. 459*]

Letters 459, to all those nations which have their own home in this blessed City, where, through this Chair of truth, they may receive wholesome doctrine, and worthy spiritual formation for the ministers of the sacred rites, and be instructed with careful diligence. Moved by this, and desiring the good of the Diocese of the Kingdom of Bohemia, where the field is open for the fruits of the sacred ministry, from the beginning of Our Pontificate We have, with Frederick, Prince of Schwarzenberg, S.R.E. Cardinal Archbishop of Prague, of illustrious memory, sought that a proper foundation be established in this city for the instruction of clergy of the Kingdom of Bohemia. And in the year 1884, with the assistance of V.F. Francis, Count of Schoenborn, Bishop of Budweis, now S.R.E. Cardinal Archbishop of Prague, and with the effort of the Imperial and Royal Majesty, FRANCIS JOSEPH, Emperor of Austria, King of Hungary, Apostolic King, and King of Bohemia, who, with diligent care, strives for the true prosperity of his people, and with Our approval, a group of Bohemian students gathered together in the city, first in a private house, and then united, whose number would be the foundation of a just and legitimate College. But it was deemed most important that a stable home be prepared for the students, which would be properly its own, and suitably adapted for the use of the students. Therefore, through buildings purchased by Our authority, which are located in the Roman neighborhood of Saint Francis in the Via Sistina in the city, a proper foundation has been established for the Bohemian students, and from Our treasury We contributed eighty thousand Italian silver coins for its purchase. Furthermore, since the beginnings of the College have proceeded very successfully, and not only has the number of students increased in recent years, but also the excellent spirit and their progress in doctrine and virtue have inspired firm hope, that great benefits will result from this institution for the dioceses of Bohemia, prayers have been presented to Us, that We would grant, by Our authority, the right of a legitimate College to the group of Bohemian clergy established in the city, of whom We are speaking. Therefore, considering it opportune to place the highest seal upon this work, of which We were the authors, and gladly granting Our approval to the prayers presented to Us, We, through these letters, for the greater glory of God, for the growth of the Catholic Religion, and for the honor, benefit, and prosperity of the renowned Kingdom of Bohemia,

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hereby canonically establish the College of Bohemian Clergy in the City, which is located in the Roman neighborhood of Saint Francis in the Via Sistina, under Our authority and the authority of Our Successors.

[*Latin ed. p. 460*]

460 By the authority of these documents, we establish, and we wish to have the same force and validity as the Pontifical Colleges for clerics in the city, according to the laws stated below. It shall be the duty of the Venerable Brothers, the Archbishop of Prague and all the Bishops of the Kingdom of Bohemia, to select clerics from both the Bohemian and German languages, which are prevalent in the country, who possess a desire to serve God in the sacred ministry, keen intellect, a thirst for learning, good physical health, and who have completed a course of gymnasium studies, and to admit them to the College. The number of such individuals in each diocese shall be determined in proportion to the size of the diocese, so that the total number of students in the College shall not exceed thirty. The students admitted to the College shall devote themselves to philosophical and theological disciplines, and shall also benefit from other ecclesiastical institutions, which are customarily taught in the Pontifical schools in the city. Since they have been called by God's grace to the divine ministry, and they understand that the path of learning is open to them in the chief city of the Catholic world, nothing should be more important to them than to strive with all their might to respond to divine grace with pure hearts and solid progress. Therefore, from the very beginning of their studies, they will diligently apply themselves to the praise of piety and learning, to faithfully and obediently observing the rules, and to every kind of duty that befits young men called to the service of the Lord. Furthermore, they shall be given tasks so that they may maintain mutual charity and concord among themselves, which no offense may disturb; and they shall diligently apply themselves to learning those things that pertain to the divine services, to the discipline of the choir, and to the ministry of the sacraments. Moreover, when they have free time from their studies, they shall write and prepare privately, in both the German and Bohemian languages, sermons, so that they may be maturely prepared for the ministry of the sacred word in their homeland through diligent practice. Furthermore, when the students, having been approved by their studies and piety, and having attained the maturity of age, are deemed worthy by the moderators to receive the sacred orders, we decree that they, upon receiving the letters of dismissal from their own Bishops, shall proceed to receive the sacred orders in the city, and we exempt them from those laws by which it is legally prescribed that announcements must be made, that intervals of time must be observed between the orders, and that the orders must not be received outside the

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times established by law.

[*Latin ed. p. 461*]

LETTERS 46. Concerning the discipline of the students, the laws which are in force in the Urbanian College for the propagation of the faith, together with those prescriptions which the statutes of the College itself require, must be scrupulously observed. The right and power over the College belong to the Archbishop of Prague and the other prelates of Bohemia, and these together shall exercise it. The one who will govern the College, or the Rector, will be he who is appointed by the Supreme Pontiff with that title and authority. However, it will be the right of the Archbishop of Prague, after consulting with the Bishops of Bohemia, to designate to the Supreme Pontiff the man or men whom he considers worthy of this office. The Moderator of the College will prepare, each year, a detailed description, in duplicate, of the matters concerning discipline, the morals of the students, and the condition of the institution, presenting one copy to the Prefect of the Sacred Congregation for the Propagation of the Faith, and the other to the Archbishop of Prague, who will take care to transmit the same description to the other Bishops of Bohemia. The Moderator will have an assistant in his office, or a Pro-Rector, chosen from the most distinguished students of the College, with the approval of the Bishop within whose diocese the student resides; and he who, by his virtue and prudence, seems more suitable for the benefit of the College, shall be preferred. To establish a Master of Piety in the College, the Moderator of the College will report to the Cardinal in place of the Sacred Prelate of the City, the man whom he considers suitable for this office, and he will be duly elected, for whose election the same Prelate will give his approval. The Master of Piety will perform the duties of a parish priest among the students and those who are in the service and residence of the College. In order that the necessary expenses for the sustenance, care, and all that the students require for life may be provided, in addition to the money which is provided from the treasury of the Austrian Empire, established for expenses related to religion, for each student; We, furthermore, by Our authority, grant to the College of Bohemia, and assign to it forever, all revenues and rights which are held by the house that is from Charles IV, King of Bohemia and Holy Roman Emperor, in the Bohemian hospice in the City, formerly called the Hospice of the Caesars, to which kind of institution it belongs; as well as the annual sum of sixty guilders in money, which is granted to the same hospice, and the sum of two hundred guilders in money, to be paid annually from Our Pontifical funds.

[*Latin ed. p. 462*]

462 LETTERS. Furthermore, considering the needs of the family of the College, and the greater assistance required by the consul, we shall devote

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all possible efforts to this matter, without any doubt regarding the common concern of the prelates of Bohemia for the same cause, who rightly know how much benefit this clerical institution, established in the city, has brought to them in cultivating their own domains. We are, however, led by certain and well-founded hope, with the care of the Bishops, that the pious generosity of the citizens of Bohemia will not fail in this salutary undertaking, to which the desire for the glory of God, the love of religion, and the charity of the homeland sufficiently encourage everyone. We wish, we decree, and we establish that these letters of ours, as they are, remain firm and valid in the future: and we declare that anything attempted by anyone concerning these matters will be null and void, notwithstanding any objections to the contrary. Given in Rome, at St. Peter's, under the Fisherman's ring, on the 11th of January, 1859, in the twelfth year of Our pontificate. M. Card. LEDOCHOWSKI. LETTERS in the form of a Brief, by which it is established that the nineteenth of March be dedicated to St. Joseph, and that sacred lights be lit on festive days throughout Spain and in the regions subject to it. What seemed to be a hope, a few months ago, that our Christian people, encouraged by the zeal of the prelates to whom we sent encyclical letters, would invoke the patronage of the most holy Virgin, now appears to be confirmed by the very outcome, and we perceive this with great joy. Indeed, a clear testimony of this undertaking was evident in the fervent prayers that several Catholic bishops of that kingdom offered to us, presenting the wishes of the clergy and the people, who considered this an opportunity to bring about the desired outcome of a plan they had long since conceived. Considering the ancient zeal of the Spaniards, and the inclination of all hearts towards the blessed Patriarch, the venerable bishops and all Christians were grieved that the day dedicated to his memory should be absent from the list of festive days, and should lack public religious observance.

[*Latin ed. p. 463*]

Letters 463 are considered, with just and merit, worthy of praise; and therefore, they earnestly requested us, through fervent prayers, that we restore the feast day of Saint Joseph to its former dignity. Surely, no one can deny that this honor is due to that most blessed man. For he, the chosen Spouse of the Virgin Mother of God, participated in that conjugal bond of such dignity, whom Christ, the Son of God, wished to be both his guardian and his father, who presided over the divine household on earth with almost paternal authority, to whom the Church has entrusted her faith and her protection; he surpasses all others in excellence, so that he deserves the utmost reverence.

However, the illustrious nation of Spain has its own reason, which the Archbishop of Valladolid, together with the Bishops of the same province, appropriately recalled to us in their prayers, to cultivate the most honored

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devotion to the blessed Spouse of the Virgin Mother of God. For in Spain, in that very province of Valladolid, he was born, and he lived a life marked by the practice of all virtues, and he died piously; and there, the most holy Teresa, who burned with the most ardent love for Jesus, showed extraordinary devotion to Saint Joseph, whom Jesus the Savior wished to be considered as her Father, and she promoted his patronage and cult.

Therefore, responding most willingly to these prayers, which have touched our hearts with a most pleasing sentiment, we, with our supreme authority, decree and ordain that the ninth day of March be established as a holy day dedicated to the Blessed Joseph throughout Spain, and in the regions subject to it, so that all, attending the holy Sacrifice of the Mass, should also abstain from those profane works which are commonly called servile, by order, so that due reverence may be paid to this great Patron of the Church, and so that the entire nation may more abundantly enjoy his most efficacious patronage.

Notwithstanding any special or individual exceptions or dispensations that may be granted to the contrary. We decree that the same faith be given to these present letters, or to printed copies thereof, signed by the hand of a public notary, and sealed with the seal of a person holding an ecclesiastical office, as would be given to the present documents themselves if they were exhibited or shown.

Given at Rome, at Saint Peter's, under the Fisherman's Ring, on the 28th day of January, 1839, in the twelfth year of our pontificate.

M. Card. LEDOCHOWSKI.

[*Latin ed. p. 464*]

464 FROM THE HOLY CONGREGATION OF THE COUNCIL OF MANTUA, CONCERNING THE COMMUTATION OF ANNUAL PENSIONS, June 8, 1889. Through summary petitions. A SUMMARY OF THE MATTER. The Bishop of Mantua reported: that two of his predecessors in the episcopate of Mantua, from the year up to 1685, had relinquished the income of the cathedral chapter, which, according to the most recent civil law, is reduced to the sums of 1,403 and 81, to be distributed annually among the residents, in proportion to their attendance at the choir, for ten months: namely, from the first day of the month of October of one year to the 31st day of July of the following year; but under the condition that the absences of those present should be compensated for in order to provide for the celebration of Masses. The chapter, considering that such a provision is less favorable to the more diligent, who derive no economic benefit from their own diligence; and furthermore, that the provision for each of the residents has become so meager that it is scarcely sufficient for the sustenance of life, requests that: 1° the income of the aforementioned sums in the accounts 1,403 and 81, be distributed among the present residents for ten months; 2° that the sums in the accounts 1,323 and 17, which remain

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until the year 1887, also be distributed among the present residents, for the purpose of providing for Masses. The Bishop, based on these reasons, strongly recommended the petitions.

A SYNOPTIC DISCUSSION:

Therefore, two things are requested: 1° that, from the sum of 1,403 accounts, the amounts to be spent on daily distributions, if any are available, be increased for those present, so that they may be used for the celebration of Masses, according to the prescriptions of the founders; 2° that the accumulated sum of 1,323 accounts, which, having been intended for the celebration of Masses, was not used, be gradually transferred to the canons.

[*Latin ed. p. 465*]

465. To prayers are opposed the most well-known principles of law, which command that the wills of the founders be observed and preserved, and that they be altered only for a just and necessary cause, as the Council of Trent states in Session 22, chapter 6, concerning reforms. Conversely, the following circumstances favor such a change: 1° It is in accordance with common law, so that the distribution of offerings may be made among the present clergy serving the choir; for the canons generally prescribe that distributions which are lost by those who are absent, should be increased for those who are present; therefore, the alteration of the will in this case would seem to be a return to common law, or a restoration of the common right; 2° By the requested assignment of offerings, the consul could, to some extent, fulfill the strict condition of the chapter; moreover, if it is permitted by the Council of Trent that simple benefices may be united to the meager stipends of the canons, in order to increase them, without detriment to the divine worship, then the requested alteration of the will would not seem entirely contrary to canon law; 3° Finally, it is said that this will also encourage the devotion and diligence of the canons. With these things presupposed, the question was raised as to how the prayers should be dispensed. RESOLUTION. The Holy Council, having considered the matter, decided to respond as follows: For the sake of distributing offerings in the future among the present clergy, let each Canon be obligated to celebrate three Masses each year for the founders; regarding the libels of 1323, they shall be divided among the canons, with the obligation of applying as many Masses as correspond to their respective shares, to the synodal tax. MANTUA and SAINT AGATHA, of the Brotherhood of the Goths. On August 3, 1889. Session 22, chapter 7, concerning reforms. In the town of Airóla, near the boundaries of the two parishes of Saint Lawrence at Burgum and Saint Michael the Archangel, or Saint Angel at the New Gate, there exists an ancient ecclesiastic... COMPENDIUM. Acts, FACTS.

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Volume XXII. Page CCLX. 30.

[*Latin ed. p. 466*]

466 S- The church of the Goths, which formerly belonged to the Order of the Preachers, and was called Rosario. However, in the year 1744, when the building was collapsing and almost fell down, the Dominican Fathers willingly accepted the proposal of some pious men, who requested that this church be used to establish a pious society there, under the patronage of the Blessed Virgin Mary, conceived without sin; and so it happened that the church changed its old name and was commonly called the Church of the Immaculate Conception. The society was canonically established by the Bishop two years later. When the confreres visited him, they presented him with a petition, stating that they had acquired the sacred building and had the pious intention of establishing a religious society there; but, since they could not immediately proceed with the repair of the dilapidated building due to a lack of funds, they requested the parish church of St. Angel at the new gate, in which pious exercises and prayers for the dead would be held until the collapsing church was restored. The Bishop granted this in the year 1746. In the meantime, the members gradually collected funds from their own resources and from the offerings of the faithful, and rebuilt the church left to them by the Dominican Fathers, and established their seat there. Furthermore, although, according to article VI of their rules, they could choose any priest they liked as their rector or spiritual father, they nevertheless persevered in acknowledging the father of the congregation, who had been their host from the beginning of the society, namely, the parish priest of St. Angel. However, the church of the Immaculate Conception, as mentioned at the beginning, was located on the border between the parishes of St. Angel and St. Lawrence; and although there was some doubt as to which of these parishes it belonged to, it seems that the parish priest of St. Lawrence had greater influence and produced more results for his cause. Consequently, a long-standing rivalry arose between the two parish priests, and a great deal of confusion and contention ensued: for the two parish priests, whether by territorial right, or by established custom, or for some other reason, one as the parish priest of the place, and the other as the spiritual father of the society, performed the sacred functions in the church of the society.

[*Latin ed. p. 467*]

In the city of Agde, they endeavored to perform those [liturgical] functions among themselves, setting aside and silencing the confraternities, as if nothing concerned them, indeed, as if no right belonged to the confraternities to perform the sacred functions separately and independently from the parish priests. And thus, for almost a century, there was contention between the two parish priests. Recently, however, when the confraternity

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sought to assert its freedom, and through its own rector, independently from the parish priests, sought to perform supplications and other sacred functions in its church, the two parish priests, setting aside their old rivalries, and changing aversion into friendship, entered into a friendly agreement to preserve the ancient status and the rights of both, and even now they are contending against them on this very matter before the Sacred Congregation. But in order that the limits and the importance of the present question may be understood, it is necessary to say more fully about the ancient controversies. And first of all, the episcopal court of Agde, by a decree of July 3, 1823, in a case brought between the aforementioned two parish priests, decided that all and every function should belong to the parish priest of Saint Lawrence, and that the agreement made on December 9, 1763, by both parties, should be valid and enforced. Therefore, from the existence of the church in the territory of Saint Lawrence, which the ecclesiastical judge first defined, and which was presented as a closed and contained entity, it was also decided that all and every function should belong to this parish priest in the church of the Immaculate Conception. How important this matter is, everyone easily understands; for it could not grant to the parish priests the right to interfere with and dispose of the church of the pious confraternity. Therefore, it is not surprising that the contention intensified from this decree. However, the two parish priests appealed from the episcopal decree to the metropolitan court of Benevento, and this, after two years, and precisely on June 28, 1825, rendered a judgment entirely different from that of the episcopal court. For it did not concern the boundaries of the parishes, but the right of the parish priests to perform functions.

[*Latin ed. p. 468*]

468 In ConcepciÃ³n, the actions concerning the church of the Immaculate Conception; were judged not in a petition, but solely in a possessory manner, and furthermore, the rights of the sodality were fully preserved. This sentence, according to its nature, became final, and the Ordinary of ConcepciÃ³n communicated this to the sodality through his executive decree. And indeed, the sodality, after only a few days had passed, appealed to the Bishop through its rector, stating: "The rector of the Sodality is still being hindered in the exercise of his sacred functions by the parish priest of Agde." Upon receiving this, on December 31, 1825, the Bishop replied: "The Reverend Rector and spiritual father of the Sodality of the Most Holy Conception of Airóla shall exercise all functions pertaining to his office of rector; but within the confines of the church of said Congregation, and without any prejudice to the rights of the local parish priest." Truly, this was the expected end to the controversies; but it was not so; indeed, there exists a legal document which proves that, even after that time, two parish priests continued to pursue their claims to the exercise of sacred functions within

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that church, despite the Bishop's decree, and furthermore, it is proven that in the year 1860, the same two parish priests of Agde and ConcepciÃ³n, with the admiration of the people, seriously contended with each other on the feast of the Immaculate Conception, concerning the procession to be led. Nor was the general decree of Bishop Ramaschiello, issued on October 16, 1872, able to resolve the matter. For, having relinquished the governance of the diocese due to old age and illness, and having been given a coadjutor, Bishop Iaderosa, the two parish priests of Agde and ConcepciÃ³n seem to have again petitioned him, so that they might be admitted to the celebration of sacred functions, as before, in the church of the pious sodality. But whatever may be the intentions of these two parish priests to persuade the Bishop to their point of view, of which there is not sufficient evidence; it is certain that on September 13, 1888, the episcopal Curia wrote to the Vicarius foraneus of the locality of Airóla, to condemn the scandals that...

[*Latin ed. p. 469*]

On the last Sunday of August in the year 469, Saint Agatha of the Goths, through the aforementioned two parish priests, held a meeting in the Church of the Sodality, on the occasion of sacred functions. Through these writings, or decrees, the sodality is clearly deprived of the power that had previously been preserved and recognized for it, namely, the power to celebrate sacred solemn functions by itself and independently of the parish priests. Therefore, considering itself aggrieved, the sodality immediately appealed to the Holy See. The synoptic account presents the arguments of the parish priests who, in the present case, act against the members of the sodality, claiming to defend their right to perform the sacred solemn functions in the church of the Immaculate Conception, especially citing the Benevento decree, which assigned these functions to the parish priests; they claim that this decree has always been observed and has become a settled matter, so that any ordinances of the Bishops contrary to this decree should be considered as having no value. Indeed, they say, until the month of August of the year 1888, the solemn functions, especially on feast days, were always performed by the parish priests; and this practice has only been disturbed today by the presumptuous action of the confrater. As for the clause concerning the preservation of the Benevento decree, they say that it was prescribed by them against the confraternity, although it has never been invoked, even though they have always performed the aforementioned functions. Furthermore, they ask, does this not infringe upon the common law? They point out that in the decree of the Sacred Congregation of 1703, a distinction was made between parochial rights and parochial functions. Regarding this distinction, the following words were included in the preliminary opinion of Cardinal Leand. Colloredi, in which the nature of parochial functions is clearly indicated. "Besides the parochial rights, which are usually connected with the benefit of the

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parish priests, and about which canonists frequently speak, there are also parochial functions, so called because they pertain to the PARISH PRIESTS."

[*Latin ed. p. 470*]

470 The matters concerning the patronage of Saint Agatha pertain either to the patrons themselves, or at least should be brought before them, either because of the nature of the benefices, which are entirely connected with parochial rights, or because of the dignity and the connection that the parish priests have with the pastoral office, for the sake of which the parish priest performs and exercises the functions of the Bishop. Having established this distinction and applied the decree of the year 1703, when the Sacred Congregation of Rites, in its responses to questions (dubia) 10, declared that the celebration of solemn Masses throughout the year, whether for the living or the dead, does not belong to parochial rights, it does not follow that these functions can be performed by the rectors of confraternities, but rather, on the contrary, that these functions, being parochial, are reserved to the parish priests; likewise, when in its response to question 21, the Sacred Congregation of Rites declares that processions can be held outside the confines of the Church with the permission of the Bishop, this, when it is a matter of a clearly parochial function, must be understood in such a way that, with the permission of the Bishop, the procession is carried out by the parish priest of the place where the church is located, and, if it is necessary to pass through other parishes, the permission of the Bishop is sufficient for this purpose. This interpretation is truly not new; for it has been handed down by Monacellus in *Formulæ legales*, Vol. 2, Title 13, Formula 1, n. 54, and following; by Ursaya in *Disputationes Ecclesiasticæ*, 29, Vol. 9, Part 2, and it was considered by Benedict XIV; although, as it should be noted, he completely rejected it, considering it erroneous and entirely foreign to the opinion of the Sacred Congregation of Rites, and quite the opposite of it (Instit. 105, n. 100, and following). Furthermore, this interpretation has never been adopted by the Roman Congregations, as will be clearly seen from the decrees cited below. Therefore, two parish priests inappropriately appeal to this argument. And these arguments are presented by two parish priests for their own cause. DEFENSE OF THE CONFRATERNITY. On the other hand, in favor of the confraternity, it has been peacefully admitted, here and there, the canonical erection of a sodality within the parish church and with its own rector. With this established, and whatever may be the case regarding the territorial jurisdiction of one or the other parish priest, whether the sodality is located within the boundaries of Saint Lawrence, or rather, within the district of Saint Michael, it seems not unreasonable that the members should request that 1) the sacred functions, whether simple or solemn, be celebrated for both

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the living and the dead,

[*Latin ed. p. 471*]

Saint Agatha of the Goths, in the year 471, could perform the offices for the dead in her church independently of any parish priest; and sacred supplications could be performed outside the confines of the church with the permission of the Bishop. Indeed, concerning the first point, in the Bisinian documents of October 6, 1640, Gardellini, no. 2593, the Sacred Congregation of Rites decreed that the solemn functions in a simple church, located within the confines of a parish, belong to the rector of that church. This is clearly stated in the decree of Urbis et Orbis of the year 1703, especially in questions 3 and 4, provided that these functions are not considered to be the rights or functions of the parish; and this practice is consistently followed by the Sacred Congregations, which always refer to the aforementioned decree of Urbis et Orbis in resolving disputes between parishes and sodalities, as seen in S. C. C. in Dortana, on Parochial Rights, July 5, 1738; in Bassanen, on Parochial Rights, July 11, 1767; in Ischia, on Rights and Privileges, December 5, 1863 and June 25, 1864, in question 5; S. Cong. Episcop. and Regul., in one document on Parochial Rights, September 2, 1870, Acta S. Sedis, Volume VI, page 109; in another document on Parochial Rights, September 5, 1879, Acta S. Sedis, Volume XIII, page 25; also, the Sacred Congregation of Rites, in Nicaea, March 30, 1878, where a question arose between the parish priest of the cathedral church and a sodality of mercy, decreed: "It is necessary to adhere to the general decree of December 10, 1703, therefore, the aforementioned sodality may lawfully celebrate Masses, both for the living and for the dead, through its own chaplain, and perform other functions defined in the aforementioned decree, without any prior permission from the cathedral parish priest." However, in the matter at hand, the confraternity specifically insists on certain functions, concerning which the controversy primarily revolves, and in order to have the right to perform these functions recognized, it cites specific decrees. Therefore, in Cerreti, on February 8, 1732, in the documents of Ferraris, Volume on Confraternities, article 2, no. 9, the Sacred Congregation responded regarding the celebration of a solemn Mass for the dead with the anniversary, as well as the celebration of a solemn Mass with the first and second Vespers on the feast day of the Confraternity, erected in...

[*Latin ed. p. 472*]

472 The church of St. Agatha of the Goths, being distinct from the parish church, does not belong to the parish priest, but to the chaplain of said church and of the Fraternity, with the faculty of receiving priests who are pleasing to them. This is clearly derived from the general decree of the year 1703, concerning question 10, and from the Nicene Council, cited above. The Sacred Congregation of Rites has resolved this matter frequently; for

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example, in the cited document concerning Hortana, concerning question 1, whether non-parochial functions, and specifically the celebration of Masses with the assistance of a deacon and subdeacon, can be performed in the churches of the lay fraternities of Syria, independently of the parish priests, during the more solemn festivals of these churches, the response was: "Affirmative." And likewise in the document concerning Reatina, Sacred Functions, January 13, 1884; Marsorum, Sacred Functions, June 26, 1858; Balneoregion, concerning the functions of the Oratory, May 28, 1864. Furthermore, in the document concerning Naples, concerning the question "Whether the Fraternity can raise its own cross during the funeral service, and whether it is permitted for its chaplain to wear the stole and rain cape," the Sacred Congregation of Rites responded on January 13, 1760: "Affirmative," as cited by Ferraris, I, chapter, article 2, number 33. And from the decree of the year 1703, number 20, when considered in conjunction with the response of the Sacred Congregation of Rites of July 7, 1877, in the document concerning Caserta, it is evident that the funeral services over the bodies to be buried in these churches or public oratories of the fraternities do not pertain to the parish priest, but to the chaplain, unless it concerns the burial of the deceased who were subjects of the parish priest within whose boundaries the oratory is located. Indeed, the Sacred Congregation of Rites, in the cited document concerning Hortana, concerning question 3, "Whether the chaplains of these churches can recite the office for the dead and celebrate Mass according to the prescriptions of the Ritual, before the bodies are buried in these churches," or rather, whether this pertains to the parish priests, responded: "Affirmative concerning the first part, negative concerning the second part." And likewise in the cited document concerning Ischia, concerning question 2. Therefore, it is clear that there is a legitimate basis for the previous assertion. As for the second point, namely, the right to make processions on their own outside the confines of the church with only the permission of the Bishop, this is expressly granted to the fraternity in the general decree of the year 1703, under number 22. The parish priests, indeed, in this matter...

[*Latin ed. p. 473*]

Saint Agatha of the Goths, in the year 473, contends, even with the Bishop's permission granted, that the right to lead the aforementioned processions belongs to them, lest their parochial rights be diminished. However, such a claim openly contradicts the decrees of the Most Holy Ritual Congregation, among others, of February 9, 1608, and September 2, 1662, in Asculana, December 5, 1868, in Siren, chapter 3, and the Sacred Congregation of Councils in Savona, February 12, 1688, in Cremona, June 7, 1723, in Ischia, cited section 3, in which it is expressly recognized that the rectors of churches have the right to lead such processions, provided

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that the Bishop's permission is present. For it is an unwavering principle that churches existing within a parish are independent of the parish priest with regard to functions that are not forbidden to them by law. Indeed, the final chapter on the office of the Archdeacon decrees that churches located within the limits of a parish are in no way subject to the parish priest, unless the matter concerns parochial rights. If, however, the parish priest demands something else, he must present and demonstrate the causes and reasons for his petition. Chapter concerning monastic chapels, decision 2089, paragraph 10 and 199, before Coccino. Furthermore, in the matter of two parishes, in order to assert a right in the church of the Immaculate Conception, the only valid title is the Benevento judgment, which establishes that they must maintain their possession. However, this judgment is entirely unfounded. For, besides the fact that the judgment of an inferior judge cannot override the decrees of the Most Holy Congregations, furthermore, such possession cannot be proven to be legitimate: it has been repeatedly interrupted, both by force of the ordinances of the Ordinary of Saint Agatha, and de facto by continuous acts contrary to it by the rector of the confraternity. And even if such possession were to be established, it would not be sufficient for the aforementioned parish priests to claim the right to perform these functions; for, besides the fact that the rights of the confraternity were expressly reserved in the Benevento judgment, furthermore, the Most Holy Ritual Congregation has repeatedly declared that its decrees override any customs to the contrary, even ancient and long-standing ones; Most Holy Ritual Congregation, August 3, 1839, and September 2, 1847. With these things established, the proposed claims must be refuted.

[*Latin ed. p. 474*]

474 Of Saint Agatha of the Goths: Doubts I. Whether a sodality, through its Rector, can independently perform sacred functions, whether simple or solemn, for both the living and the dead within its church, in the absence of two parish priests. II. Whether sacred supplications can be performed outside the confines of its church with the permission of the Bishop.

RESOLUTION. The Sacred Congregation, having considered the matter on August 3, 1889, decided to respond as follows: To I, affirmatively, according to the form of the Decree of the year 1703 (1). To II, affirmatively.

(1) Although this decree was cited in Vol. I, 591, we deem it useful to repeat it again for the benefit of readers who may lack the complete collection of this work. For it contains the common law expressly formulated to resolve all disputes and difficulties between parish priests and secular sodalities, which frequently arise. The decree in question is as follows:

DECREE OF UNIVERSAL APPLICATION

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"Concerning the rights, functions, and privileges between Parish Priests and Lay Confraternities, their chaplains, and officials. To bring an end to the controversies that frequently arise between Parish Priests, Lay Confraternities, their chaplains, and officials, concerning parochial rights, ecclesiastical functions, and certain privileges, the following questions were proposed to the Most Eminent and Reverend Cardinal Colloredo in the Sacred Roman Congregation:

1. Whether Lay Confraternities legitimately established in parochial churches have dependence on the Parish Priest in the performance of non-parochial ecclesiastical functions. Response: Affirmative.

2. Whether said Confraternities established in chapels, oratories, both public and private, annexed to parochial churches, and dependent on them, have said dependence on the Parish Priest with regard to said functions. Response: Affirmative.

3. Whether Confraternities established in public churches have, with regard to the same [functions], any dependence on the Parish Priest within whose parochial boundaries the churches are located. Response: Negative.

4. Whether Confraternities established in oratories, both public and private, separate from parochial churches, with regard to said ecclesiastical functions, have said dependence on the Parish Priest. Response: Negative.

5. Whether Blessings, and the distribution of candles, ashes, and palms, are matters of purely parochial rights. Response: Negative."

[*Latin ed. p. 475*]

St. Agatha of the Goths, 475, 6. Whether the blessings of women after childbirth, of the baptismal font, of holy water, of Easter eggs, and similar things, pertain to the purely parochial rights. Answer: No, to the parish priest, but the blessings of women and of the font of holy water ought to be performed. 7. Whether all the functions of Holy Week pertain to the purely parochial rights. Answer: No, as stated. 8. Whether the celebration of the solemn Mass on Thursday of the Lord's Supper pertains to said parochial rights. Answer: No, as stated, but it pertains to the parish priest. 9. Whether the first ringing of the bells on Holy Saturday pertains to said parochial rights. Answer: No, as stated, but it pertains to the Constitution of Pope Leo X, number 22, § 14, concerning the more dignified Church, form 10. Whether the celebration of solemn Masses throughout the year, either for the living or for the dead, pertains to said parochial rights. Answer: No, as stated, but it is permitted to the brethren, solely in the more solemn celebrations of the same Church or oratory, as in Brundusium, under number 1601, on the feast of July 1st. 11. Whether the exposition of the Blessed Sacrament for forty hours, and the blessing given to the people, pertain to said purely parochial rights. Answer: No. Whether the exposition made with relics and sacred images, and the blessing given with them to the

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people, pertain to said parochial rights. Answer: Decrees. No, and with regard to the blessings with relics and images, they must be observed. 12. Whether the functions in the preceding eight questions, namely from question 5 to 12, can be performed in private oratories, even if the parish priest objects. Answer: Sufficient provision has been made in the foregoing. 13. Whether in said private oratories, the canonical hours can be recited by the brethren at fixed hours, with chanting, or without other permission from the parish priest. Answer: Affirmative, unless the Ordinary establishes otherwise for a reasonable cause. 14. Whether in said private oratories, it is permitted to celebrate a private Mass, with the consent of the local Ordinary, and even if the parish priest objects. Answer: Affirmative. 15. Whether the chaplains of the confraternities can announce to the people the feasts and vigils occurring during the week, without the permission of the parish priest. Answer: Affirmative. 16. Whether the parish priest, without inviting the brethren, can teach Christian doctrine in the aforementioned public churches and oratories, or in private ones separated from the parochial jurisdiction. Answer: No. 17. Whether in the aforementioned public churches of the confraternities, public sermons can be held, even throughout the entire course of Lent or Advent, with the permission of the Ordinary, and without the permission of the parish priest. Answer: Affirmative. 18. Whether in the same churches, a Mass can be celebrated, either read or sung, before the parochial Mass, either read or sung. Answer: No, unless the Bishop otherwise ordains. 19. Whether it pertains to the parish priest to perform the funeral service over the bodies to be buried in the aforementioned public churches and oratories of the confraternities.

[*Latin ed. p. 476*]

476. Of Saint Agatha of the Goths. Response: Affirmative, when a church or oratory is to be consecrated. To the parish priest, within whose jurisdiction it lies.

21. Whether processions can be held within the boundaries of these churches, according to the statutes of each confraternity, without the intervention or permission of the parish priest. Response: Affirmative.

22. Whether these same processions can be held outside the boundaries of the aforementioned churches, without the permission of the parish priests through whose territory they pass. Response: Negative, unless the permission of the Bishop is present.

23. Whether chaplains of confraternities can wear the stole in these processions. Response: Negative, outside their own church.

24. Whether, when a Bishop visits public churches of confraternities, which are not regular and do not have their own rector or benefice, the parish priest, within whose territory these churches are located, should offer him the aspergillum. Response: Negative.

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25. Whether the rectors and chaplains of these churches and confraternities can, in the absence of a special and legitimate title, and solely by virtue of parochial jurisdiction, compel unwilling individuals to attend the functions of the parish church. Response: Negative.

26. Whether the Sacrament of the Holy Eucharist can be reserved in these churches of confraternities, whether parochial or regular, without a special indult from the Apostolic See. Response: Negative.

27. Assuming the faculty of reservation, whether it can be publicly exposed within a year, without the permission of the Ordinary. Response: Negative.

28. Whether the parish priest can interfere in the administration of offerings and alms collected in these churches, or retain the key to the box for receiving them. Response: Negative.

29. Whether, in a parish church, members of a confraternity, or their chaplains, can interfere, without the invitation of the parish priest, in the functions of that church, whether parochial or non-parochial. Response: Negative.

30. Whether confraternities, whether established within a parish church or outside of it, can, at will, and according to the particular statutes of each, hold their congregations, without the intervention or permission of the parish priest. Response: Affirmative, provided they do not impede the functions and Divine Offices.

31. Whether they can administer their own property and dispose of it, without any dependence on the parish priest. Response: Affirmative.

32. When the parish priest attends these congregations by order of the Ordinary, and as his delegate, whether he can cast a decisive vote. And to the extent affirmative. Response: Negative.

33. Whether even a double vote. Response: Negative. And so, saving however conventions and agreements perhaps made in the erection of confraternities, begun in concord between the parties, and approved by the Holy See, indults, con-

[*Latin ed. p. 477*]

Saint Agatha, by synodal and provincial constitutions, and by customs of venerable, or at least centennial, standing, declared and decreed: if it seems good to His Most Holy Lordship. On December 10, 1703. And after I, the Secretary, had made a report to His Most Holy Lordship concerning the aforementioned decrees, after a complete reading thereof, He praised them benignly and approved them, and commanded that they be published, and observed, notwithstanding any others who might act to the contrary. On January 12, 1704. PARISIAN MARRIAGES. December 14, 1889. Session 24, chapter 1, concerning the reform of marriages. SUMMARY OF FACTS. Maria Antonia Gabriella Lejeune was born in Paris on the last day

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of the year 1857, of Anthony Lejeune and Agatha. Orphaned by the early death of her father, she lived with her mother until she entered into marriage with a Belgian prince, named Alphonse de Chimay. The civil marriage ceremony was celebrated in Paris on September 21, 1876. The ecclesiastical marriage took place two days later, that is, on September 23, 1876, in the parish of Epinay, near Paris, under the jurisdiction of the Bishop of Versailles, where the Lejeune family owned a certain estate. The parish priest of that place, who was then Alexander Maillot, was initially hesitant as to whether he could officiate at this marriage; therefore, he inquired of his Ordinary, the Bishop of Versailles, regarding this matter. But when he received this response: "I grant you the faculty to bless the marriage of the daughter of your castellanus in your church; for from what you report, it appears that this marriage ought to be publicly celebrated both in Paris and in Epinay," he, with a tranquil mind, and as the very Maillot attests, officiated at the marriage, as if he were the bride's own parish priest. However, after a few years, serious discord arose between the spouses, and Gabriella separated from Alphonse. She fled to England with a certain lover, while he accused his wife of adultery before the civil authorities of Belgium, and on this ground obtained a divorce sentence on March 3, 1883.

[*Latin ed. p. 478*]

478. In Paris. The sad condition in which Gabriella found herself, she realized, and which, as she affirms, religious feelings made even more bitter, impelled her to seek a way out, and therefore, after consulting with some people, she decided to challenge the marriage secretly contracted, namely, one not celebrated before her own parish priest. First, she presented her case to the Archbishop of Paris; but since he considered himself not to be the competent judge in this matter, the woman herself approached the Most Holy Father, requesting "that this case be rather delegated to the Parisian Tribunal." She stated, "Indeed, according to established practice and canonical rules, the petitioner should address the court of the domicile of her husband in Belgium; ... and although her husband principally resides in Belgium, where he was born, he frequently comes to Paris, where he has many business dealings... moreover, all the witnesses who must appear are located in Paris; and the parish priest of Épinay, Maillot, having been transferred to the parish of Marne in the Diocese of Paris, resides there: and the petitioner... believes that she has not lost her domicile in Paris, to which she frequently comes, where she was born, and where her relatives live." Having received a favorable response, a tribunal was established at the beginning of the year 1887 within the ecclesiastical court of Paris, numerous parties and witnesses were heard, and finally, on November 7, 1888, a judgment was rendered, declaring the marriage begun by Alphonse and Gabriella to be null and void "due to a defect in the form of Trent." The defender of the marriage, appealing in the exercise of his office, to-

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day presents the case before the Supreme Sacred Congregation, and here the petitioner's advocate, and there the defender of the marriage, present their arguments. A synopsis of the arguments: THE DEFENSE OF THE WOMAN. The woman's advocate divided his argument into three parts, in the first of which he noted certain things that he considered to be necessary and beyond dispute; in the second, he defended certain principles of law, relating to the rural parish priest.

[*Latin ed. p. 479*]

PARIS. He argues that the individuals residing within his territory are not subject to his jurisdiction, nor is he authorized to bless their marriages. Furthermore, he contends that the parish priest of Maillot was, in fact, only a rural parish priest, that is, a priest serving a rural area. In the first instance, he observes that the parish priest of Épinay, Maillot, who performed the marriage, was not the parish priest of Paris, Saint Thomas Aquinas, who should have been present if the marriage had been celebrated in Paris, and that, above all, the actress's mother, opposing Gabrielle in the matter of the marriage, was actively involved. Indeed, the advocate argues that the mother, who is now Duchess Caraffa from her second marriage, has left nothing undone to this end, and that she did not hesitate to zealously support the opposing side in court, a fact for which the advocate strongly reproaches her, and which he thoroughly investigates. Moreover, both parish priests believe this to be the case, which the advocate does not consider surprising, for they cannot deny what they themselves have done. Furthermore, the advocate speaks of the alleged corruption of certain witnesses in favor of the actress; however, he declares this accusation, based on the testimony of the current parish priest of Épinay, Genty, to be false and defamatory. Moreover, he points out that almost all the witnesses are highly praised by the accuser, Maillot himself, are religious, and, more importantly, are all of substantial standing: indeed, concerning matters of public and well-known importance, such as their place of residence, they could not lie, even if they wished. Finally, he argues that the Duchess's mother, as a prominent figure in the Épinay area, and claiming considerable authority in that place, had the power to influence the witnesses from that area, whom she accuses of being corrupt, and to sway them to her point of view, more so than her daughter, who is now an outsider to that area and has less influence. Finally, the advocate notes that it is beyond dispute that Maillot was not acting under any delegation, but merely as the actress's own parish priest in the matter of the marriage. This is established primarily by the testimony of Maillot himself, who states: "Nothing was done through me, nor through the Curia, with the Parish Priest of Saint

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Thomas, to obtain a delegation..."

[*Latin ed. p. 480*]

480 PARIS. For the sake of the dispensation. I considered myself to be the proper pastor, and I had informed my Bishop accordingly. This is confirmed by the rescript of the Versailles court, mentioned above in the account of the case, in which it was permitted to the pastor of Maillot to be present at this marriage; where the advocate accused the author of the rescript, because, according to his opinion, he had granted permission, and thus exposed the sacrament to the danger of nullity. It is also confirmed by the marriage license, in which there is neither a word nor a hint of a delegation; and finally, by the testimony of the pastor of Paris, Saint Thomas, who expressly states that he did not grant any delegation, because he was not asked to do so; and that, although something was said, he replied that the marriage could be celebrated by the pastor of Épinay. He repeats that he did not grant any delegation for this purpose, nor even for caution; and he concludes that Madame Lejenne only presented something for the poor after the marriage, and that of her own accord. And although the mother of Gabrielle informed the pastor of Saint Thomas about the impending marriage, she did so merely out of urbanity. Furthermore, the pastor of Saint Thomas states that he was informed about this marriage, but that he was not told where it should take place. Having presented these facts, the advocate proceeds to the second point, stating that a rural pastor, that is, the pastor of the place where someone goes for recreation or to attend to rural affairs, is not the true and proper pastor of that person, before whom a marriage can be celebrated. This is first and foremost demonstrated by the authority of the Most Reverend Barbosa in his *Collectanea* concerning the Council of Trent, chapter *Tametsi*, number 16; by Ferraris in *Tractatus de Matrimonio*, article 14, 48; by Reiffenstuel in *Ad Titulum de Clamoris Desperatione*, number 61; by Santi in the same title, number 75; by De Angelis in *Praelectiones*, book 3, title 29; by Vecchiotti in *Praelectiones*, book 3, number 210; and by Emi Tarquini in his opinion for Rome, dated January 11, 1868; but most importantly, by the doctrine and authority of Pope Benedict XIV in *Institutiones Ecclesiasticae*, book 33, number 7, which states: "The third [point, namely the one resolved by the Sacred Congregation] is that if someone goes from the city to the countryside for recreation, or to attend to his affairs, he can never be said to..."

[*Latin ed. p. 481*]

PARISIAN. 481. Concerning marriage, the parish priest is he in whose parish the house of the countryside is located, and who, for that purpose, goes to live there, or establishes a domicile, or quasi-domicile. Ponzio, in book 5, chapter 13, section 1, number 2, asserts that the parish priest of the countryside is the proper parish priest for marriage, and adds that this is

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the opinion of the Sacred Congregation of the Council, which should be preferred to that of the Roman Rota, which maintains the contrary. However, the contrary opinion is commonly held, namely, that the parish priest of the countryside is not, in the case presented, the proper parish priest for marriage: Barbosa, etc.; Schmalzgrueber, etc. And with regard to the resolutions of the Sacred Congregation, we will present those that we have extracted from the records, when we were secretary of the Sacred Congregation, and not those indicated by the authors, who have never seen them, and here are the resolutions: The Sacred Congregation, adhering to previous declarations, responded that a rural parish priest is not the proper and true parish priest, when one goes to the countryside for the purpose of recreation, or for rural business; therefore, a marriage cannot validly be celebrated before such a parish priest. However, the following ancient declarations are given: In Florence, the Sacred Congregation judged that a rural parish priest is not the true parish priest, when one goes to the countryside for the purpose of recreation, or for rural business. In Florence, similarly, it responded: "The rural parish priest is not the proper parish priest, and therefore, a marriage celebrated before him is null." In Avila, the Sacred Congregation judged that a marriage contracted before a parish priest of the place where the contracting parties are found is not valid, if they do not intend to establish their domicile there. On December 1, 1640, book 16 of the Decretals, page 470 verso and page 471. "And indeed, rightly and coherently, according to the Tridentine law. Indeed, Tametsi commands that marriage be celebrated before the proper parish priest; but such a priest is only the parish priest of the domicile or quasi-domicile, since 'it is not the place where one is born, but the place where one lives, that makes one a parishioner.'" Zitelli, Appendices, page 387. Benedict XIV, in his constitution "Paucis," and from here, Reiffenstuel, book 1, number 58, with the common opinion. Acts, Volume XXII, page COLX, 31.

[*Latin ed. p. 482*]

482. PARISIEN. However, he who goes to the countryside either for recreation or to attend to rural affairs does not acquire there either a domicile or a quasi-domicile. Not a domicile; for, according to Em. d'Annibale, Sum. t. 1, n. 82, "a domicile is a place of permanent residence. Therefore, a person is said to have a domicile in that place where he has established his permanent home, the sum of his affairs and possessions." L. 20, Ad municip.; L. 7, C. De incoi. And therefore, to acquire a true domicile, "it is not sufficient if one merely purchases a house or property in that place, according to L. 4 ibid., or rents a shop, according to L. 19, § 2, De iudic; and even less so, if one resides there for the purpose of study, according to L. 2 ibid., or for the cultivation of the land, according to L. 27, ad municip., and cap. 2, De sepult., in VI." Consequently, it is not sufficient to acquire a domicile if one resides in the countryside either for recreation

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or for rural affairs. Indeed, not even a quasi-domicile is acquired. For, in order to contract marriage, not any dwelling place suffices, but only that dwelling place with which one intends to continue residing for the greater part of the year, that is, for more than six months. This is not only maintained by Em. Tarquini and Em. D. Annibale, in the aforementioned passages, but is definitively established by the most recent decrees of the Sacred Congregation, dated June 7, 1867, May 2, 1877, and May 6, 1886, rejecting the opinion of those who, incorrectly interpreting the doctrine of Benedict XIV in his letter to Archbishop Goanus, hold that a residence of one month suffices for a quasi-domicile. Furthermore, he who goes to the countryside for recreation or to attend to rural affairs "is not usually present in the countryside for the greater part of the year, nor even for half the year, but only for three or four months," as observed by Em. Tarquini, loc. cit., with Sánchez, De matr., disp. 23, I, 3, n. 12, and S. Rota, ibid. Therefore, in this case, a quasi-domicile is not acquired. Indeed, it seems to be entirely excluded. "Thus, in the work of St. Ita, lib. 4, tit. 3, num. 75: The intention is deduced from the purpose of the residence; if the purpose is precarious, which indeed implies an indefinite delay, then..."

[*Latin ed. p. 483*]

PARIS. 483. It can also be the case that, even if brief, and entirely subject to the will, a quasi-domicile is not acquired. Therefore, he who is found in a certain place for the purpose of residing there, or to conduct family business, or to attend to his health, does not acquire a quasi-domicile in that place, and consequently does not have a proper parish priest for contracting marriage. "Indeed," the advocate concludes with the words of Emi. Tarquini, I, chapter 1, "it is the unanimous opinion of all, and is confirmed by the perpetual practice of the sacred tribunals—that marriages contracted before the parish priest of the place where one usually resides are null." Furthermore, the advocate continues in the third paragraph of his argument, the parish priest Maillot was not the parish priest of the family Lejeune, but only the rural parish priest of that place, namely, the place where this family, sometimes, but not frequently, went for recreation or to attend to rural affairs. And he strives to demonstrate this, first, from the testimony of the Duchess herself, albeit reluctant. For, on the one hand, she confessed and declared that she had her domicile in Paris, in the parish of Saint Thomas on the road, where the Lejeune family's house was fully furnished, to which letters were sent so that they would not be lost; where the Duchess received legal citations, and which she did not abandon, either in person, or formerly with her first husband, nor in widowhood, but inhabited; and referring to this time, she expressly said: "My domicile was in Paris." And although the Duchess carefully notes to undermine the value of this fact: "We remained in Paris for about three or four months." Letters were sent to this domicile so that they would not be lost; but at all times, she turned to the right or to

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the left; nevertheless, according to the advocate, this exception is invalid, if "one does not lose one's domicile unless one departs and does not intend to return, according to L. 20 concerning municipalities, and L. 7 concerning municipal affairs; but one retains it if one departs, even for a long time, but with the intention of returning; because then one does not seem to have departed, according to L. 27 § Celsus concerning municipalities, and L. 48 concerning the law." Furthermore, the Duchess, with the parish priest of Saint Thomas, discussed matters concerning the future.

[*Latin ed. p. 484*]

484. The Parisian. Having admonished the woman about marriage, and having offered customary gifts after the marriage ceremony, she clearly demonstrates what she thinks of this priest. On the other hand, concerning Épinay, although the Duchess claims to have resided there, the patron states that, according to the Duchess's own testimony, this woman never possessed there any semblance of a true or quasi-canonical domicile. For the Duchess herself declares that she is constantly traveling, and never remains long or stably in any place; which leads one to presume that she never established a domicile or quasi-domicile anywhere except in Paris. Furthermore, it must be noted that the Duchess did not consider Épinay to be her true domicile, but rather as a country house, a summer residence, or a "vivarium," as she herself calls it. Moreover, this country house was not the only one, nor the most beloved, for she was accustomed to spending two or three months, more or less, each year in another villa, situated from Paris, in the open countryside, among woods and hills, of which she says: "It is a typical estate." Thus, the Duchess admits that she preferred Épinay to Flines. Furthermore, it is also evident from the Duchess's confession that, until two years before her daughter's marriage, the Épinay villa was completely neglected. She says: "After the year 1874, I began to abandon the Flines property as a villa." And after stating this, she says that, in the year 1875, preceding her daughter's marriage, she spent the entire summer in the Épinay villa, overseeing the work that was to be done there; when asked about the previous year, she replied: "Before such work, the Épinay castle was my favorite summer residence. If I rarely went there, and if I more often visited Flines, it was because I was attending to my daughter's affairs." When the Duchess's patron, having accepted her confession on substantial matters, addresses the alleged preference for the Épinay villa, he notes that this assertion scarcely corresponds to the reality of the facts: rather, that the priest Maillot, a friend of the Duchess, asserted that she feared the Épinay air.

[*Latin ed. p. 485*]

PARISIAN. 485 Furthermore, it must be added that if there was a longer stay in the place called Epinay in the year 1875, as testified by the Duchess,

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this was not due to any significant reason, but rather to trivial, rural matters, and therefore was ineffective. For she states: "In the year 1876, my stay in the villa at Epinay was due to the need to attend to some rural affairs, and to prepare a dwelling on the occasion of the marriage of my daughter." Finally, according to the Duchess's own confession, in the year 1876, when the marriage took place, the stay was shorter and less continuous than in the previous year, and therefore, it scarcely resembled a true residence. Indeed, it is reported that, according to the testimony of the parish priest, Saint Thomas, and of Madame Cayzac, who was the wife of the former secretary of the Lejeune family, the decision to hold the wedding in the countryside was made solely to avoid certain social difficulties. Moreover, the Duchess testifies that, after the beginning of the marriage negotiations with the Prince de Chimay in the early part of 1876, after various journeys and stays in Algeria, Paris, and the villa of Funes, she did not return to Epinay except during the summer months. She further adds that she did not even establish herself there permanently, stating: "I often returned to Paris, that is, almost every week; but my stay was fixed at the villa in Epinay. I went to Paris in the morning, and I returned to the villa in the evening. We only left to go to Paris to sign the marriage contract." She notes that she came to Epinay for only one reason, namely, to prepare a dwelling for the marriage that was about to take place, and to celebrate the marriage in that location; certainly not to reside there for the greater part of the year, which, indeed, the Duchess openly denies. And since the daughter is an opponent in this matter, she provides a most convincing argument, according to the well-known axiom that there is no better proof than the confession of the person involved: Reiffenstuel, in the title on confession, numbers 26 and following. It is also possible, the speaker argues, to demonstrate this from the testimonies of the parish priests of that time. The urban parish priest, Saint Thomas, stated: "That woman, namely, the mother and daughter, have a house on the street called 'du bac' as their domicile in the city; I was their parish priest." With these words, the witness clearly and irrefutably affirms the domicile of the Lejeune family in the city.

[*Latin ed. p. 486*]

486. PARISIEN. Cum, simul, parochus Maillot, qui parochiam Epineyensem regit, qui initium matrimonium tempore, his verbis describit qualis habitatio eiusdem familiae in sua parochia fuerit: ex eo quod irata esset cum municipio et cum antecessore meo, domina Lejeune, raro suam proprietatem adibat. Loca aestiva petebat. Eius familia nisi iter faciendo Epineyum petebat. Cum amplas possideret divitias, saepissime itinera arripiebat. Per integra anni tempora morata est in Flines, causa rusticana dirigendi negotia. Ab anno 1872, domina Lejeune petebat quodlibet anno Villam epineyensem; varia eius mora fuit, sed brevis habitualiter. Attamen, per quatuor integros menses, illa morata est in

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mea parochia; quod contigit anno 1875. Nec mirum, quod tam parum suburbanum epineyense excoluerit; nam, iuxta eundem sacerdotem, ipsa verebatur aerem epineyensem. Unde tandem, ait patronus, ex testimonio parochi epineyensis scimus commorationem ducissae in Epinay, raram et in transitu fuisse, et si aliquando paullo longior, non nisi ad rusticana negotia invigilanda; ergo semper iis elementis carentem, quibus canonicum domicilium et quasi domicilium constituuntur. Quin dicatur aliud sentiendum esse quoad annum 1876, in quo celebratum est coniugium; siquidem de hoc anno idem Maillot haec testatur: credebam quod peteretur Epineyum ceu fiebat aliis annis.... Matrimonium initum fuit sub septembris fine. Domina Lejeune cum filia advenerunt sub fine Augusti. Post matrimonium discessit, sed mater per aliquod tempus post matrimonium initum ibi permansit. Quibus stantibus, quaerit orator, quibusnam argumentis moveri potuerit sacerdos Maillot, ut hanc familiam suam subditam putaret, et quonam consilio duci ad Gabriellae matrimonio adsistendum; eo vel magis quod ab initio dubitaverit et recusaverit; unde et Ordinarium consulendum censuerit. Et respondet, duplici causa posse rem explicari, scilicet hinc ex desiderio et insistentia familiae Lejeune ut ruri matrimonium fieret, illinc ex studio parochi, ne huic tam diviti familiae resisteret, et ab ea extraneum se faceret.

[*Latin ed. p. 487*]

PARISIAN. 487 In support of this, he adduces certain arguments and indications drawn from the proceedings, and especially the fact that Maillot seems to be unaware of the title under which his own parish holds its jurisdiction, and is thereby confused and falls into numerous contradictions. He invokes the theory of *quasi-domicile*, recalling that the Duchess did not have a more permanent residence in one place than in another; he appeals to the length of time of residence, saying: "I would therefore have had the affirmation of one month"; he does not omit to state, as if it were a witness to *quasi-domicile*, that he is certain that the Lady Lejeune had a *quasi-domicile* in Villa Epineya; and on this point, he defends the idea that a *quasi-domicile* can be acquired with greater ease. "I," he says, "do not consider it necessary to observe a longer period of time, for the greater part of a year, in order to acquire a *quasi-domicile*"; he even contends that the Duchess was his ordinary parishioner, saying: "Since she was habitually my parishioner, I did not inquire about the month, and this, with a new criterion, is not so much from the *domicile*, as from the benefits and largesses made by the Duchess in favor of the Church"; he assigns a double *domicile* to her: and he said to Lady Lejeune, that in the case of a double *domicile*, the parish priest must be more certain about this marriage; nor does he stop there, but he goes from a double to a triple *domicile*; for he presents the Duchess as if she were using a triple *domicile* because of her affection for traveling to Epineya; indeed, he goes even further, con-

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fessing that Lady Lejeune did not reside for a long time in Paris, Flin's, or elsewhere, other than in Villa Epineya. Therefore, the advocate concludes, since the priest Maillot, in order to support his jurisdiction, has asserted so many contradictions, so many falsehoods, whether in law or in fact; this very fact confirms the lack of any better argument, and invincibly confirms what otherwise flows plainly from the statements made by Maillot himself, where he describes the manner and mode of the family Lejeune's arrival and residence in Epineya. But since Maillot is so eager to protect the marriage, he cannot be suspected of being untruthful when he testifies to things that are contrary to his intention. For no one, he says,

[*Latin ed. p. 488*]

488. PARISIAN. The throne, being less suspicious of a witness than an adversary. And therefore, from these, only a sufficiently proven case seems to appear to the advocate. However, in order to achieve a fuller confirmation, it is necessary to examine the testimonies of each witness. He begins with domestic witnesses, among whom he places first Alexander Gay, the brother and closest friend of the Duchess; who, although he seems to have taken the side of his sister in this cause, nevertheless confessed that his sister had a house on the "voie du bac" as her primary residence; and that the other dwellings were rural properties. Furthermore, the advocate calls this testimony decisive; for if there is a desire for rural life, there is a lack of willingness to remain permanently, or for a significant portion of the year; and when this is lacking, a domicile is not acquired, although someone may have resided there "for a thousand years," as Saint Rota expressed before Priolo in Naples on June 22, 1705. The same is testified by the widow Cayzac, who was the wife of a man who, from the year 1849 to 1879, was a member of the Lejeune family. Similarly, Mistress Tanchon Gabriella, a companion and traveling companion of the Lejeune family, reports that after Gabriella's marriage, she spent some time with the Duchess's mother, and that Maillot deserves praise for her piety and honesty. Nor is it otherwise with Robert Quidant, Gabriella's teacher of the harpsichord, and the two servants, Duchateau and Pirard. Regarding the witnesses who are not members of the Lejeune family, the advocate notes that these are so far from being considered a domicile or a quasi-domicile for the Duchess in the place of Epinay, that several of them completely deny, or at the very least doubt, whether this villa, especially before Gabriella's marriage, could have truly been considered a place of rural residence for the Duchess, for this notable reason, namely, that she herself remained there for only a short time, or that she visited there occasionally. Thus, Verjon, Lallement, Gillet, Molière, and Hauffman; while others, such as Billard and Paupe, lament that the Duchess did not visit or reside more often in Epinay. Next follow the witnesses whom the Duchess's mother has summoned and who are to

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be heard.

[*Latin ed. p. 489*]

PARISIAN. 489 inquired. However, even those who are more inclined to favor the Duchess's intentions, such as the syndic Hautefeuille, who confesses that he is surprised that a marriage celebrated with such pomp is now being challenged due to a defect in the ritual, nevertheless could offer no better response to the question of domicile than this: it can be said that in the summer months, more people resided in Épinay than in Paris. Furthermore, Charles Appay and his wife Lucilla, and especially the two nuns who for many years have been dedicated to the education of girls in Épinay, have spoken more clearly against the Duchess's domicile in that place. Moreover, certain merchants, namely a baker, a butcher, and a woman who sells perfumes, who, by reason of their businesses, ought to be better informed on this matter, have confirmed this. From their records, it appears that the Duchess resided in the Épinay estate from May 27th to May 31st, from September 19th to September 23rd, and from November 2nd to December 23rd of the year 1876. Given these facts, the advocate argues, it can rightly be concluded, based on the testimony of all witnesses, that the Lejeune family was so frequently present that they had a stable and canonical domicile in Épinay, which it cannot be safely affirmed that they had a real and permanent residence there. Indeed, it may be said that they had, at the very least, a quasi-domicile, at least for the year of the marriage. For, fourthly, the advocate contends that in the year 1876, the Lejeune family, a few days before the wedding, came to Épinay precariously and not only without their consent, but also without the possibility of residing there for any length of time. The witnesses, including the actress and her husband, state this point; and the witness also states that this point is derived from several witnesses; for the widow Cayzac, the maid Pirard, and Duchâteau, Kaufiman, Charles Appay, the teacher Quidant, and also the syndic Hautefeuille, have testified that a few days before the wedding, the Lejeune family came to Épinay, and did not settle there permanently; and finally, the witness also states that the Duchess and the parish priest Maillot have confessed regarding the instability of their residence there, and its brevity; the advocate invokes the attention of the court to the testimony of two merchants, who, with the records presented,

[*Latin ed. p. 490*]

490. PARIS. Examining the records, where daily sales are meticulously documented, and among these, those made in 1876, they provide clear evidence of the Duchess's presence in Épinay. The advocate for the opposing side attempts to undermine this evidence, but in vain; for if she resided there so precariously, and for so few days, either before or after the wedding, it cannot be presumed that she possessed the intention of

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establishing a permanent residence, that is, the will to reside there for a significant portion of the year. This is even more evident when considering the Duchess's usual habits, which precluded a long-term stay, and the specific purpose of her visit and residence that year, which was already determined: to meet her daughter after the wedding in Flines, and the time of year was approaching the end of the season suitable for rural life, when the Duchess requested to be in Épinay to celebrate the marriage. Furthermore, if the Duchess herself admits that she never intended to reside there for a significant portion of the year, not even during the year of her marriage, the advocate believes that there can be no further doubt on this matter. And therefore, he hopes that the marriage will be declared null and void due to the lack of jurisdiction in the parish priest, which, he argues, would greatly contribute to the spiritual well-being of the client.

OBSERVATIONS. DEFENSE OF THE ACCUSER. Conversely, the defender of the marriage presents his arguments in five points. In the first, he contends that no fraud occurred in the process. Indeed, he states, according to the instructions of the Sacred Congregation for the Propagation of the Faith, "spouses in matrimonial causes assist the Bishop in whose diocese the husband has his domicile. An exception is made if the conjugal life has been interrupted either by separation from bed and board or by malicious abandonment by the husband. In the former case, either party must exercise the right to accuse the other before the Bishop of the diocese where the domicile is located. In the latter case, the wife may bring an action before the Bishop within whose diocese her domicile is located." However, in the present case, the husband...

[*Latin ed. p. 491*]

PARISIAN. It was in Belgium, and the judicial action should not have been instituted in that place, but certainly not in Paris. Or, if elsewhere, then in the court of Versailles, since Epinay, where the marriage was celebrated, and from which most of the witnesses were drawn, is located within the diocese of Versailles. Furthermore, the Parisian judge did not entrust the examination of the witnesses from the parish of Epinay to the Bishop of Versailles, but summoned them before himself. It is also reported that the plaintiff's advocate agreed with the marriage defender that the witnesses to be examined from the parish of Epinay should be selected by the parish priest, Gassiat. But the parish priest Gassiat, in whom the plaintiff's advocate placed so much trust, is thereby rendered suspect, especially since the plaintiff herself is not without scruples. Moreover, the Sacred Congregation of the Council instructs that witnesses should be questioned, "after having first heard the examination or confession of the spouse who induced them," as to whether they believe that the spouses have spoken the truth. But the Parisian judge did not comply with this precept, since he omitted to inquire from them whether they had any knowledge of the

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actress's reputation and virtue; and thus, the natural means of ascertaining this was removed. Moreover, it is probable that evil arts were employed to corrupt the witnesses on the part of the parish priest Gassiat, since the very defender of the marriage, who had previously trusted in the priest Gassiat, later regretted the actions. Therefore, when, before the end of the proceedings, the priest Gassiat was relieved of his duties as parish priest by his Ordinary, the defender believes that this happened as a punishment for the frauds so committed. However, his successor, Monsieur Genty, not only did not diminish, but rather increased, the suspicion of the priest Gassiat's favor towards the actress, through the things he reported. Therefore, the defender wants the depositions, whether of the priest Gassiat or of other witnesses presented by him, to be considered suspect, indeed, to be completely disregarded. Conversely, suspicion should be held in the opposite sense; since this woman is said to be most religious, and by the syndic Hautefeuille, to be a studious daughter. And if the daughter opposes the present cause, and seems to hate it, she does so for the good and honor of her daughter: "she hates, therefore, so that she may not perish."

[*Latin ed. p. 492*]

492. PARISIAN. In the second chapter, referring to the law of Trent, which mandates that marriages be celebrated before the couple's own parish priest, the defender argues in favor of examining the reasoning behind the law. And the defender states that Cardinal Pallavicino (Sessor. dei Concilio di Trento, L. 22, no. 17) recalls that this decree was issued to prevent the most serious evils that arose from clandestine marriages. However, the defender argues, the marriage in question was not clandestine, but was celebrated openly and publicly, in the daytime, in a public church, after three announcements had been made in the parish. Indeed, it can be said that it was openly initiated by the parish priest himself, who was Urban, from the parish of St. Thomas. For the defender responds that, in addition to the fact that the marriage banns were publicly announced in the parish of St. Thomas, this parish priest also knew and approved of the intention to celebrate the marriage in the parish of Epinay. He states: "The Duchess informed me of her daughter's marriage and told me where it would be celebrated. I did not inquire about the rights involved... I knew that the young woman Lejeune had the right to marry in the Epinay estate." Moreover, not only did the parish priest of St. Thomas acknowledge that the Lejeune family had the right to celebrate the marriage in Epinay, but the parish priest of Epinay himself, and even the Curia of Versailles, questioned about the matter by the priest Maillot, also felt this way. And although the parish priest Maillot initially doubted his own right to bless the marriage, nevertheless, after a thorough investigation, he dispelled his doubts and came to the conclusion that the young woman Lejeune was not staying in Paris, Flin,

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or elsewhere, but in Epinay. This fact demonstrates the prudence of the parish priest and increases the value of the opinion he expressed after a careful examination. Furthermore, the Vicar General of Versailles cannot be blamed for the rescript in which he permitted the parish priest Maillot to bless the marriage, based on a certain uncertain or probable opinion of jurisdiction, as he stated to me. Indeed, the Vicar in that rescript properly distinguished between two cases: the celebration of the marriage, and its announcement. He absolutely permitted the former: as for

[*Latin ed. p. 493*]

PARISIAN. He argues that there are 493 denunciations to be carried out in Paris, and that he is the only one who can provide the necessary counsel. Furthermore, he cannot be accused of the parish priest of Maillot having presented circumstances less accurately and according to his own will when seeking advice from the curia, for the defender claims that this suspicion is reckless and lacks any solid foundation. Indeed, he argues that Maillot was so independent of the Duchess that, on another occasion, when the matter of expanding a chapel in the church was being discussed, he opposed the Duchess's wishes. Therefore, given the marriage, with so many preliminary investigations, so many solemnities, and so much pomp, before a priest who was admitted and recognized by the episcopal curia, and by the very Parisian parish priest himself, it is impossible to doubt the validity of the marriage. In the third section of his argument, the defender contends that the Lejeune family, in addition to their urban residence, also possessed property in the rural area of Épinay. Regarding those who reside in multiple places, Roman law in L. 5 ff. Ad municip. states: "Labeo judges that he who engages in business equally in multiple places has no domicile anywhere; but some say that he is a resident or has a domicile in multiple places, which is truer." This is further confirmed in X. 18 § C in the same work, and in L. 5 ff. % penultimate in the same work: "It has pleased prudent men that a person can have a domicile in two places, if he has established himself in both in such a way that he does not seem to be less settled with either." Therefore, Sánchez Be, in *De Matrimonio*, book 3, section 24, number 2, concludes that "when someone has a double parish of residence, which happens when he lives equally in both, as in winter in one and in summer in the other, he can enter into marriage before the priest of either parish... But by 'equally,' we do not mean mathematically, but rather morally." The Roman law, L. C. de inc., describes the indications and elements from which one can determine whether a domicile exists: "We do not doubt that a person has a domicile in the same place where he has established the bulk of his assets and possessions, from which he

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would not depart, unless compelled to do so, and from which..."

[*Latin ed. p. 494*]

494. The Parisian [plaintiff] seems to have set out on a journey, and if she has ceased her travels, it appears she has abandoned her intention to travel. However, the Lejeune family, besides having a residence in Paris, had established a home in the region of Epinay, and both were so attached to their respective homes that it seems as though they were traveling whenever they were absent from either location. Indeed, the defender states that it is common among wealthy Parisians to have homes both in the city and in the countryside, using the former in the winter and the latter in the summer. As an example, there is the case of the marriage of the Countess d'Estourmel, which was recently heard before the Sacred Court, where she confessed to having spent time in her country estate, even though her primary residence was in Paris. (1) Furthermore, the castle in Epinay was perfectly equipped, and from the beginning was very well maintained, and therefore, the Duchess states, she stayed there with her husband for three or four months in the year 1862; and in the year 1863, after his death, she remained in the same place for several months. This is confirmed by several witnesses, from which it follows that the husband of the Duchess Lejeune had established a second, rural home in Epinay, in addition to his urban home. However, in Article 22 of the Municipal Code, it is stipulated that a widow should retain the domicile of her deceased husband, at least until it is demonstrated that she has given notice of a change of domicile. But in this case, it is so far from being the case that this could be proven, that rather the opposite can be inferred from the records. In the fourth section, the defender attempts to refute several points, and first, the Parisian investigation of the accusation, because while a domicile or quasi-domicile is acquired from the very first day of residence, provided there is an intention to remain, on the contrary, the entire Parisian process consists of counting the years, months, days, and hours during which the Duchess was absent from the region of Epinay. But absence, if there is an intention to return, does not negate a domicile. (1) You have this question in Volume XXII, page 368.

[*Latin ed. p. 495*]

PARIS. 495 The judge in Paris notes in his judgment: "The customs of the Duchess, which always involved new journeys and new plans, were an obstacle to the necessary intentions and circumstances for establishing a domicile." But, the defender argues, if this is the case, it is doubtful that the Duchess would have been inclined to wander; and then the marriage of the daughter could not have been hindered by the absence of her proper parish priest. The same judge adds: "This is also true in the case of a simultaneous rural and urban domicile, when the Duchess does not equally

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reside in both homes." But the defender replies that, since the Parisian investigator was not very concerned with obtaining a comparison from the witnesses regarding the urban and rural homes, the assertion of their inequality should not be considered. Moreover, the defender points out that if the governess of Gabriella affirms that she usually stayed in Paris for a short time, and Maillot himself, the parish priest of Saint Thomas, states that he had only seen the Duchess's daughter two or three times before the wedding, then it is clear that... But, the Duchess "only stayed in the place of Epinay for a temporary reason" and "in fact often neglected it," as the aforementioned judgment claims, the defender completely denies this, according to the testimonies given in the preceding chapter; and he only admits that during the time of the Prussian War, the Duchess refrained from staying at Epinay and cultivated the estate of Funes in Belgium, where she resided for a long time for the sole purpose of avoiding the dangers of war. Finally, the aforementioned judgment, in stating that the Duchess's longer stays in the place of Epinay during the years 1875 and 76 were of no value, notes that the purpose of the stay was temporary. But the defender objects that even a temporary purpose was the reason why the Duchess stayed in Paris for two or three years longer and more stably than in other places. Furthermore, if the purpose of a longer stay does not contradict an urban domicile, it will not contradict a rural one either. In the fifth and final section of his objections, the defender finally argues that, even if it were conceded that the Duchess did not reside in the village of Epinay, the marriage would nevertheless be...

[*Latin ed. p. 496*]

496. The Parisian argues based on the principle of tacit delegation, or presumed title, and common error. He states: "Indeed, the parish priest of Saint Thomas informed me of this marriage, and I was certain that the young woman, Lejeune, had the right to enter into marriage in the village of Alia. Conversely, the parish priest of Alia was not unaware that he was assisting at the marriage, with the knowledge and approval of the parish priest of Saint Thomas. He testifies: 'I told the Duchess to speak with the parish priest of Paris about this marriage.' I believe it can be affirmed that she did so." Furthermore, Sánchez, in *De Matrimonio*, I, 3, dispute 35, number 1, writes: "There are two kinds of license that are obtained through ratification: one is a tacit license or ratification for the future, when it is understood that the parish priest, having learned of the matter, will approve; the other is present or past, when, before the administration of the sacrament, or at the time it is administered, there is a tacit and interpretative consent of the parish priest, manifested by some external sign." And in number 14, he continues: "First conclusion: a tacit license, obtained through ratification for the future... is not sufficient to make the marriage valid... second conclusion: a tacit license, which is obtained through present

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ratification, is sufficient for a priest from another diocese to assist at the marriage, as when, in the presence of and with the knowledge and tacit consent of the Ordinary or the parish priest, and with the power to contradict, he assists... Furthermore, it must be said that when the ratification is past; because still, the license must precede." However, the defender argues that, in this case, there is no doubt that the parish priest of Saint Thomas gave a tacit license, either through present or past ratification. Moreover, he adds that, for actions in which consent is the efficient cause, the dominant will is certainly required; according to what is stated by Gury, *Compendium Theologiae Moralis*, on marriage, number 891; but, in the case of delegations granted to assist at a marriage, according to the defender, "consent is not required as an efficient cause, but any consent is sufficient; dissent is also sufficient. The reason is that the parish priest in the celebration of the marriage performs the functions of a necessary witness, and nothing more."

[*Latin ed. p. 497*]

SECTION 497. Therefore, just as a marriage celebrated before a parish priest who is invited and willing is valid, because the parish priest, even if unwilling, remains a witness; and just as a marriage begun before another priest is valid, by reason of a license granted, even if obtained through grave fear or deceit, as Sánchez states in the cited work, book 4, chapter 48, number 13; so too, it must also be said that the consent given by the parish priest of St. Thomas is valid. And this is not enough. For Sánchez, in book 1, chapter 22, number 64, adds to the above, that a license, whether expressed or tacit, granted by a parish priest to another priest, based on a presumed title and a common error, is valid. He asks, "What should be said if a parish priest feigns granting a license to a priest to assist at a marriage, that is, without a true intention of granting it, but only through external words?" And he answers: "However, I believe that such a concession is valid, and the marriage is valid in both cases. In the first case, because there is a license granted by a legitimate superior, and its nullity is hidden, and there is a common error with the prescribed title... In the second case, because, by present ratification, it is considered in law and by experts to be a true license, as if it were expressly granted, and thus there is a presumed title and a common error." This is also maintained by Barbosa in *De officio et potestate Episcopi*, page 2, note 32, number 109. Therefore, whether it is maintained that the parish priest of St. Thomas gave true consent, or whether it is maintained that he feigned giving consent, it always seems to be the case that the delegation and license are valid, and thus also the validity of the marriage. Indeed, there should be no doubt as to whether a common error and a presumed title were present in this case; for it is certain, all other things being equal, from the testimony of the notary Hautefeuille, who is surprised that a marriage celebrated with

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such pomp and solemnity should be impugned by some defect in form. Therefore, the defender believes that the marriage is valid on two grounds: first, because the family Lejeune resided in Epinay; and second, because, in any worse doubt, a valid delegation was present from the parish priest of Epinay to the parish priest of the city. With these points raised, the intention was to weaken the arguments presented in the Act, Volume XXII, page C, section X, number 32.

[*Latin ed. p. 498*]

498. PARIS. Whether the judgment of the Parisian court should be confirmed or rejected in this case. RESOLUTION. After deliberation on December 14, 1889, the Sacred Congregation decided that the following should be answered: The judgment should be confirmed. FROM WHICH WE GATHER. I. To establish a proper parishioner for the purpose of entering into marriage, a domicile is required, which is a place of permanent residence; or a quasi-domicile, which is a place where one intends to reside for the greater part of the year. II. Therefore, a rural parish priest is not a proper and true parish priest when one goes to the countryside for the purpose of recreation or for rural business; and therefore, no marriage is validly contracted before him. III. The intention to establish a quasi-domicile can be inferred from the purpose of the stay; and therefore, if the purpose is precarious, and involves an indefinite delay, and is entirely dependent on the will of the person staying, a quasi-domicile is not acquired. IV. It is the unanimous opinion of all that the practice of the sacred tribunals has consistently affirmed that marriages contracted before a parish priest of the place where one usually resides, but not as a true parishioner, are null. V. One can have two domiciles and two parish residences, when one lives equally in both; and one can enter into marriage before the parish priest of either. VI. In the matter of the parish priest of Epinay relating to the Lejeune family, he was not the proper parish priest of that place, but only a rural parish priest of the place to which the aforementioned family went, not frequently, for the purpose of recreation, or to attend to rural business; that house in the countryside was not equally inhabited.

[*Latin ed. p. 499*]

499 SENOGALLIEN. On the 7th of September, 1889. Through summary petitions. SUMMARY OF THE MATTER. In order that the nuns of the Most Holy Order of St. Charles might not be deprived of the Holy Sacrifice on feast days, the Bishop granted permission that, in the absence of any other priest, the parish priest of St. Mary of the Abbess could celebrate the Mass in the monastery. However, it happened that the parish priest, who also serves as a confessor in that monastery, and who, due to the extreme poverty of these holy virgins, receives absolutely no compensation for his

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temporary work, after careful consideration, applied 15 second Masses to the satisfaction of the burden, as a canon of the Archpriest, from whom, however, he receives no alms. But, having been admonished by the Bishop not to do this again without the permission of the Apostolic See, he humbly petitioned the Most Holy Father, requesting that he be granted the permission to apply these 15 Masses in the celebration of the Holy Sacrifice in the future, and that, moreover, he be absolved from the wrongful application made in the past. Asked for his opinion and vote, the Bishop responded as follows: "Regarding the first point, although it is generally advisable to be more strict in granting indulgences, so that no undue advantage, even due to labor and inconvenience, is taken, and so that a second Mass is not received from those for whom it is granted, under the guise of labor and inconvenience, as alms in another form, contrary to the disposition of the canons; nevertheless, in a special case, special circumstances must be considered. For, while it may be possible to deny the parish priest Marinelli the opportunity to celebrate a second Mass with some inconvenience on feast days solely for the benefit of the monastery of St. Charles, on the other hand, and this is particularly important to me, he himself performs the office of confessor in the aforementioned monastery, and receives no compensation whatsoever, and since the monastery is so extremely poor, no compensation can be given or requested. Therefore, since the parish priest Marinelli..."

[*Latin ed. p. 500*]

500. SENOGALLIEN. These matters are to be discussed in the monastery of St. Charles, with some inconvenience, 2. with great spiritual benefit to the nuns, who otherwise would not be able to hear the sacred services on festive days, 3. and especially because the nuns receive confessions without any payment. I leave it to the wise judgment of the Fathers to decide whether, given these special circumstances, it can be permitted to grant the parish priest the faculty of fulfilling his legacy by offering fifteen Masses with the second offerings, which he doubles. As for the second matter, namely, the request made by him for the application of second Masses, which was already completed in previous years, and which, as he claims, was done in good faith for the fulfillment of his legacy, it seems to me that a stricter course of action should be taken. For it is not understandable how he could have believed that it was permissible to do so, when the Bishop, when questioned about this matter, clearly and explicitly stated to him that it was not permissible for his legacy to be fulfilled through second Masses, which he doubles. Nor does the reason given by him, namely, that he did not receive any alms from this, hold any weight, since fulfilling his legacy through second Masses is, in reality, the same as arbitrarily receiving alms from them and acting contrary to the express will of his Ordinary.

Disputation Synoptica. Having stated these things, there is scarcely any-

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thing more to add. For the prescriptions of the canons in this matter are clear and certain, and they completely prohibit the giving and receiving of alms directly for the celebration of a second Mass. This is evident from the Constitution of Benedict XIV, *Declarasti*, and from the constant practice of the Holy Congregation, of which the clear testimony is *Cameracensis. Missae pro populo*, September 25, 1858; *Ventimilieu*, December 13, 1835. Indeed, in this matter, the Holy Congregation has proceeded so rigorously that when the Bishop of Brixiensis asked whether an unusual custom could be tolerated, namely, that an alms offered by a pious member of a sodality, or by the prefect of the fabric, to the parish priest for a second Mass, without any special application, could be admitted, the Holy Congregation responded on March 3, 1855: "The custom, according to the explanation given, is to be condemned."

[*Latin ed. p. 501*]

SENOGALLIEN. And although, for a different reason and indirectly, that is, by way of remuneration for special labor, something might be accepted for a second Mass by the Sacred Congregation, as sometimes occurred in monasteries, for example, on June 11, 1845, and in the review of March 23, 1861; nevertheless, this principle does not apply to the matter under consideration; but rather, it is properly required that fifteen second Masses be applied with remuneration. For it is fitting that the Mass be augmented either by a manual stipend or by the fruits of a benefice. Therefore, the petition made is properly and directly opposed by the law; and therefore, strictly according to the law, grace would have to be denied in the future, and furthermore, concerning the previously applied Masses, for which the parish priest received something, he himself would have to be condemned to restore the same amount. Nevertheless, if, considering the particular circumstances, clemency were to be preferred over the strictness of the law, the Most Reverend Fathers decided to defer the matter for judgment. RESOLUTION of the Sacred Congregation. After considering the matter on September 7, 1889, it decided to respond: "Concerning absolution for the past, five Masses are granted; concerning the future, for the granting of a reduction of fifty Masses to five Masses, during the service that the orator renders to the monastery, let the matter be discussed with the Most Reverend Fathers." FROM THE SACRED CONGREGATION OF RITES: A question regarding the exposition of the image of the Blessed Virgin Mary, which is venerated in Valle Pompeiorum. The Reverend Father Marcolinus Cicognani, general procurator of the Order of Preachers, states that many of the Fathers of his Order have begun to expose in the churches of the Order the image of the Blessed Virgin of the Rosary, which is venerated in Valle Pompeiorum, in order to promote devotion to the Most Blessed Virgin; and desiring to foster their piety, according to the laws of

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the Sacred Congregation of Rites.

[*Latin ed. p. 502*]

"DECREE: The following questions, for the opportune resolution thereof, were humbly submitted to the Sacred Congregation, namely:

Question I. Is it permissible, in churches in which canonically established Confraternities of the Most Holy Rosary exist, to substitute the ancient image of the Blessed Virgin Mary of the Rosary with a Pompeian image? And the answer is negative.

Question II. Is it permissible to place a small Pompeian image on the same altar, as is commonly said, "under the painting," of the image of the Blessed Virgin Mary of the Rosary? And the answer is negative.

Question III. Is it permissible, in said churches, to dedicate another altar to the aforementioned image of the Blessed Virgin Mary of Pompeii? And the answer is negative.

Question IV. Is it permissible, at least in some place within said churches, to expose the image of the Blessed Virgin Mary of Pompeii to public veneration? And the answer is affirmative.

Question V. Can the faithful and confraters, by visiting [the image], obtain the same indulgences granted to the altar of the Most Holy Rosary?

And the Sacred Congregation, upon the report of the undersigned Secretary, and with the exquisite vote of another of the Roman Pontifical Consultors Theologians, having reviewed the proposed questions, responded as follows: Negative in all. And thus it decreed and declared.

On the 24th of February, 1890.

DECREE concerning the restoration of the cult formerly rendered to the venerable Servant of God, Anthony Mary Zaccaria, founder of the Congregation of Saint Paul the Barnabite and the Angelic Sisters of Saint Paul.

Anthony Mary, born in Cremona from the noble family of the Zaccaria, in the year of salvation 1537, demonstrated from his earliest years that he placed God above all things, which was evident before all men through his outstanding virtues. Having completed a course of liberal studies at home, he obtained a degree in medicine at Padua, where he shone as an example of piety, innocence of manners, and a pursuit of wisdom, which is from above. Returning to Cremona, and called by heavenly light to higher things, he bid farewell to worldly affairs and embraced the clerical life. Afterward, strengthened by the priesthood, and entirely devoted to the excellent emulation of God, with which he burned, he sought to restore the purity of morals and faith among his fellow citizens. Especially in assisting the needy, his charity shone forth in Milan, where, with companions

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chosen for this apostolic ministry, he founded a Congregation..."

[*Latin ed. p. 503*]

DECREE concerning the Order of Clerics Regular founded by St. Paul laid its foundations; two years later, he established a family of sacred virgins, which subsequently received the name of the Angelics of St. Paul. He furthermore wonderfully demonstrated exceptional love for God and neighbor, both by zealously attending to the beauty of the House of God and the solemn worship of the Eucharist, and by promoting pious societies of men, and by religious retreats for Clerics, and also by sacred expeditions. However, after a brief period of labor, he returned his rich spirit to God on the third of the Kalends of July in the year 1639. Although the Founder himself was prevented from bringing the Congregation of Clerics Regular to full stability due to a grievous illness that seized him, nevertheless, he left behind the best seeds of piety, charity, and regular discipline within it. These seeds (as He is said to have divinely foreseen while dying, and promised to his grieving children) have yielded abundant fruit in the Lord's field: as is clearly demonstrated by the history of this Congregation, especially in diligently performing the duties of the sacred ministry, in educating youth in religion and the best arts, and in vigorously defending the reasons of the Catholic faith and the rights of the Apostolic See. To this illustrious servant of God, from the very moment of his glorious death until the year 1634, in which Pope Urban VIII decreed measures concerning the worship of God in Serwest, celestial honors were widely bestowed. Afterwards, his cult publicly ceased; especially the Family of the Barnabites, (obedience being never sufficiently commended) preferred to forgo the honors of the Blessed, rather than even slightly deviate from the decrees of the Apostolic See. Therefore, the cause of his canonization did not proceed through the ordinary channels. However, through ordinary and apostolic processes, and after due consideration, Pope Pius IX declared the heroic virtues of the venerable Anthony Mary Zacaria on February 2, 1849. Nevertheless, it has constantly been the desire of the Alumnis of the aforementioned Congregation to obtain the restoration of his cult from the Apostolic See, so that it might be endowed with certain titles, except those mentioned in the aforementioned Urbanian decrees, and with other additions, which seemed to merit a certain indulgence from the Apostolic See. Therefore, at the request of the Reverend Father Ignatius Pica, a professed priest of the aforementioned Congregation, who was then the promoter of this cause, His Eminence and Most Reverend Cardinal Lucidus Maria Parocchi, Bishop,

[*Latin ed. p. 504*]

DECREE 504, from Albano Laziale, the Relator of the cause itself, at the Ordinary Meetings of the Sacred Rites, held at the Vatican on January 28,

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1888, proposed the following question for discussion: Whether there is a place for the restoration of the aforementioned cult of the venerable Servant of God in this case, and to what effect does this pertain? But the Most Eminent and Reverend Fathers entrusted with safeguarding the Sacred Rites, after a careful examination of all matters, and after hearing the voice and writings of the Reverend Father Augustine Caprara, Promoter of the Faith, postponed giving their judgment, and decided to write: "Deferred to the next meeting, and to be presented again with new observations from the Promoter of the Faith." In the meantime, with new observations prepared by the Promoter of the Faith, and with more extensive documents provided by the same, the same Most Eminent and Reverend Lord Cardinal, Relator, at the request of the Reverend Father Alphonsus Mariae Mattioli, a priest of the same Congregation, and the new postulator of the cause, again proposed the aforementioned question at another ordinary meeting of the same Sacred Congregation, also held at the Vatican on the same date. And the same Sacred Congregation, after mature consideration of all matters, and after hearing the aforementioned Promoter of the Faith, finally decided to write as follows: "Considering the particular circumstances of the case, it is to be requested of the Most Holy [Pope] for the restoration of the cult formerly given to the venerable Servant of God." On December 17, 1889. Concerning all of the above, a report was subsequently made to the Most Holy Lord, our Pope Leo XIII, by myself, the undersigned Cardinal, Prefect of the aforementioned Sacred Congregation, and his Holiness, having approved the decree of the Sacred Congregation, deigned to restore the cult to the Blessed Anthony Mary Zaccaria, founder of the Congregation of Regular Clerks of Saint Paul, and of the Angelicals of Saint Paul, which had previously been suspended. On January 3, 1890. C. Card. ALOISI-MASELLA, Prefect of the Sacred Roman Congregation. VINCENTIUS NUSSI, Secretary of the Sacred Roman Congregation.

[*Latin ed. p. 505*]

805 APPENDIX VII. In which are recounted more Decrees of the Holy Congregation of Rites.

The Most Reverend D. Ignatius Yalasco, Bishop of Pastopolitan, humbly proposed the following question to the Holy Congregation of Rites for opportune resolution: "When some chalices are so tall that the thumb cannot reach the bottom, is it essential in the consecration of the chalice to form a cross with the holy chrism from lip to lip, so that the center of the cross is precisely in the very bottom of the chalice? Or is it sufficient to anoint as far as the thumb can reach, or is it also permissible to anoint with a longer finger, namely the index finger?" And the Holy Congregation itself, upon the report of the undersigned Secretary, and after hearing the opinion of another of the Masters of the Apostolic Ceremonies, having maturely considered the matter, judged it fitting to respond as follows: "In such a

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case, the rubric of the Roman Pontifical should be observed as much as possible." And thus it responded. On September 12, 1884, at Saint-Denis.

In the Diocese of Saint-Denis, certain parishes have been assigned to priests of Religious Congregations or Institutes who enjoy their own approved calendar, and benefices have been conferred upon them. When it is questioned whether such priests, as pastors, should follow the calendar of the Diocese in which they are beneficiaries, or the calendar of their own Congregation, in performing the divine Office, the Vicar General of the aforementioned Diocese humbly inquired of the Holy Congregation of Rites:

1. Are the aforementioned Religious priests obliged to recite the Office of their own Congregation, but to celebrate Mass according to the calendar of the Diocese on days when they are obliged to offer it for the people? Or, rather, are they, as beneficiaries, always bound to the Office of their own Church?

2. Can secular priests or pastors who are to perform the sacred duties in the parochial churches of such Religious be compelled to celebrate Mass according to the calendar of that Congregation?

And the Holy Congregation itself, upon the report of the undersigned Secretary, and after hearing the opinion of another of the Masters of the Apostolic Ceremonies, judged it fitting to respond to the aforementioned questions.

[*Latin ed. p. 506*]

506 APPENDIX VII. Regarding I. Affirmative concerning the first part, negative concerning the second part, according to the Decree of Tuden, on May 23, 1846, concerning item 5. (1) Regarding H. Negative, when the color is the same, and the Decrees are observed. And thus, it was written and declared. On September 12, 1884. SANGTORÍEN. The current Master of Ceremonies in the Cathedral Church of Sanctorien, by mandate of his Most Reverend Ordinary, submitted the following questions to the Congregation of Rites for appropriate resolution, namely:

Question I. Can the custom currently observed in this Diocese be maintained, whereby the Deacon in the solemn Mass, and the celebrant in the Vespers, incense the crosses on the walls of the Church on the anniversary of its dedication?

Question II. Can the custom of renewing the Holy Eucharist once, or twice in the month, be maintained in the churches of this Diocese, when, according to the Ceremonial of Bishops, the same Holy Eucharist should be renewed each week?

Question III. On the feast of Corpus Christi, when the blessing is imparted to the people in the public procession at the portable altars on the streets, should the hymn *Tantum ergo* with its verse, and the prayer

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Deus qui nobis, or another antiphon with another verse, not precede the Holy Eucharist, as is the practice in the church of Sanctorien?

Question IV. On Sundays, should the sprinkling of the people with blessed water be performed by the celebrant, descending from the choir to the door of the church, or by the choir, and should the celebrant sprinkle the people according to the prescriptions both in the Ceremonial of Bishops, and in the three Decrees?

Question V. When the Office of the Dead is sung, and at the end of each Psalm, while the *R.* "Requiem aeternam, etc." is said, should the Bishop bless the tomb with his right hand, when nothing about this is prescribed in the Ceremonial of Bishops?

And the Sacred Congregation, after hearing the report of the undersigned Secretary, and after considering the opinion of another of the Masters of Ceremonies of the Apostolic See, having carefully considered all matters, deemed it fitting to respond to the questions proposed as follows:

(1) TUDEN. Question 5. Whether Regulars, elected by their monasteries throughout Hispania, and therefore appointed as pastors or vicars to various churches, can, or should, recite the Office and celebrate Mass according to the Calendar of the Diocese in which they serve, or according to the Regular Calendar of the Order to which they belong through their religious profession?

To 5. In the case of the Office, the Calendar of the Order should be followed, but on feast days, Mass should be celebrated for the people according to the Calendar of the Diocese. On May 23, 1846.

[*Latin ed. p. 507*]

APPENDIX VII. Regarding I. The established custom can be maintained, provided that the celebrant performs the incense offering while standing. Regarding II. The arrangement in the Ceremonial of Bishops, Book I, chapter 6, must be observed. Regarding III. The decree issued in Volterra on September 23, 1820, must be observed. (1) The Reverend Master of Sacred Ceremonies in the Diocesan Seminary, S.R.C., humbly submitted the following questions for a suitable solution: When the titular saints or patrons of a particular place are celebrated on the same day, and the Office is performed with the sprinkling of holy water, as is customary on that day in the universal calendar, should the sprinkling be done twice? Regarding IV. On Sundays, is it permissible for the priest to give the blessing to the people at the altar of the presbytery, according to other decrees? Regarding V. Negatively, and the following should be observed: can one perform the Office under a double rite, for example, one under a double rite and the other under a simple rite; how should this be done? The Rubrics and Ceremonial of Bishops. ss. App. Petri. And thus he responded. On September 12, 1884. As

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is done on the feast of Peter and Paul, the Office should be performed under a double rite of the first class, with the octave of that which, according to the universal calendar, is celebrated with greater solemnity in Treviso. This is done with the commemoration of the other, and on the following day, the feast (or) (1) VOLTERRA. Since the Authors of the Ceremonial of Bishops, and all liturgical experts, teach that the solemn procession of the Most Holy Body of Christ should be observed from beginning to end, especially in Book 2, chapter 33, number 22, and since the Sacred Rite Congregation, adhering to this disposition of the same Ceremonial, decreed on May 11, 1562, that the blessing should be given to the people only once at the end of the procession of the Body of Christ, the Most Reverend Bishop of that diocese, for the accurate observance of liturgical matters, ordered that this same decree be inserted and considered in the order of the Divine Office for the Cathedral and the diocese of Volterra; but since the opposite custom prevails in that ancient city and diocese, namely, that whenever churches or altars are encountered along the way, prayers are offered there, and the people are dismissed with a blessing; hence, the Sacred Rite Congregation added a supplication, asking: should the aforementioned decree of the Sacred Rite Congregation be followed, rather than the custom? And the Sacred Congregation, having first examined the opinion of another of the Masters of Ceremonies in writing, which was also made public by printing, in response to the Most Reverend and Reverend Lord Cardinal Julius Maria de Somalia, Dean of the Sacred College, and to the same Congregation, in place of the Most Reverend and Reverend Lord Cardinal Cacciapfci, who was absent as the relator, decided: "According to the vote, namely, that, notwithstanding the decree inserted in the order of reciting the Divine Office, the most ancient custom can be tolerated, provided that, at least, the rule of the Ceremonial is observed, that is, that there is not so frequent a pause, and the blessing is not given each time that altars are encountered, but once, or twice, and that the altars built along the way are properly decorated, and previously visited by the expert in Ceremonies, with the authority of the Bishop." And thus he responded. On September 23, 1820.

[*Latin ed. p. 508*]

APPENDIX Y II. 508 2. But if the feast of the dedication (commemoration) of another is observed with a double octave, and the cathedral church of the diocese separately observes the aforementioned feast on two distinct days, should the entire diocese not also observe the commemoration? And the same Sacred Congregation, regarding Question II: When two Martyrs are titular saints or patrons, and the relationship between them is indicated in the aforementioned document by the secretaries, and the feast inscribed on the same day is heard, and a written vow is made concerning one of them in the diocesan calendar, but only one is prescribed for all, having diligently performed their office, can this be done, while the other

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is omitted from the universal calendar? Can the office of many Martyrs be observed in common prayer? Question III. When the patrons of a church, of whom we are speaking, are two equally principal saints, and their office or feast is assigned to be observed on the same day and under distinct rites, should the feast of these aforementioned saints be separately observed in the countryside under the rite of the first class with an octave? Question II. Affirmative. Question III. Affirmative. Question IV. In the Diocese of Tarvisina (from the Rescript of the Sacred Congregation, 1834), the feast of the dedication of the cathedral church is observed on the Sunday after July 6th, under that rite, and although without an octave, the true anniversary of the church is to be observed by the entire diocese, distinctly, that is, by all churches, whether consecrated or not. Regarding consecrated churches, both urban and rural, the aforementioned feast is to be observed on their respective proper days. Hence, the question arises: 1. Should the rule prevail, which prescribes that the feast of the dedication should be observed on the same day only by the clergy of those same churches; as is demanded of the clergy to whom the care of the cathedral church and all the churches of the diocese, consecrated or not, is entrusted, and to whom the anniversary of the dedication is to be observed on the Sunday of the fourth of October? And should a distinction be made between consecrated and un-consecrated churches, and between urban and rural churches? And thus it was written and declared. On September 12, 1884.

[*Latin ed. p. 509*]

XVII. NOVARA. The Most Reverend Monsignor Stanislaus Eula, the present Bishop of Novara, explains that the collegiate and parish church under the title of Saint Gaudentius in the city of Novara, with the legitimate consent of the Bishop, is currently performing the office and other functions in a church belonging to the Congregation of the Oratory, while the aforementioned collegiate church is being restored. He humbly requested a solution to the following doubt from the Sacred Congregation: Whether any priest of that chapter, which uses its own calendar, even if it differs slightly from the diocesan calendar, must, when the color of the vestments is different, conform himself to the diocesan calendar used by the priests of the Congregation of the Oratory, in celebrating the sacred rites, or may he use his own calendar? And the aforementioned Sacred Congregation, after considering the report of the undersigned Secretary, and after a careful vote of another of the Masters of the Apostolic Ceremonies, decided that the proposed doubt should be answered as follows: Affirmative to the first part, except for the conventual Mass; Negative to the second part. And thus it responded and declared. On November 28, 1884, BRUNN. By Decree of the Sacred Congregation of February 10, 1860, for all churches in the Austrian territories, in Masses, whether solemn or parochial, on days on which it is permitted by the

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rubrics, a special collection for the Emperor, with secret offerings and after Communion, is prescribed. However, the meaning of the words "parochial Mass" is restricted by different interpretations. Therefore, the Most Reverend Monsignor Francis Salesius Bauer, the present Bishop of Brunn, humbly requested a solution to the following doubts from the same Sacred Congregation: 1. What Mass is to be understood by those words, according to the intention of the Sacred Congregation? 2. Since, according to the decree of the Most Holy Pope Leo XII, Bishops are obliged to apply the Mass for the people on all Sundays and other feasts, both those that are to be observed and those that have been removed from the number of such feasts, and since this obligation is analogous to the obligation of the pastors, the question is whether the aforementioned words, mentioned in the decree, include the obligation of the parochial Mass even for Bishops of the churches in the Austrian territories? The Sacred Congregation of Rites, after considering the report of the undersigned Secretary, and after a careful vote of another of the Masters of the Apostolic Ceremonies, decided that the proposed doubts should be answered as follows: To the first: The Mass is to be called parochial, which the pastors are obliged to apply on feast days, even those that have been abolished.

[*Latin ed. p. 510*]

•S 10 APPENDIX VII. for the people, and in it, what must be added in that case. To the Most Reverend, that is, the Bishop, in this case, is not obligated. And thus, he responded and declared. On November 28, 1884. LUCIONEN. The Most Reverend Lord Nicholas Catteau, the current Bishop of Lucionen, and also, in his own name, the current editor of the Calendar for use in the same Diocese, humbly submitted the following questions for appropriate resolution:

Question I. Since, according to the apostolic Indult, the solemnity of the principal Patron of each place usually takes place on a Sunday within the Octave of that Patron, it is clear from the responses of the Most Holy Congregation that, in churches where neither the obligation of the choir is in force nor is another Mass of the Office being sung, this commemoration should be made with the other occurrences in a solemn votive Mass of such a transferred solemnity. Therefore, it is asked:

1. Whether, in that solemn Mass, the commemoration should be made of the day within the Octave, if another Octave happens to occur, or of the simple occurrence?

2. Whether such commemorations should be made if, on that Sunday, a double of the second class occurs, which commemoration then excludes both the day within the Octave and the simple occurrence in the solemn Mass?

Question II. Where the feast of the Purification of the Blessed Virgin Mary, with which the time of Christmas is concluded, has an Octave,

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should the Preface of the Nativity, or of the Blessed Virgin Mary with the words "And you," be used in the Mass within that Octave?

Question III. Which of the Common readings should be repeated, the 2nd and 3rd nocturns within the Octave, of either the Cathedral of the Apostles Peter, or of the Confessors, or of the Pontiffs?

Question IV. Where the feast of the titular Patronage of St. Joseph has an Octave, can the readings that seem specially granted in the supplement to the Roman Octave be used without an Indult, within that Octave?

Question V. Which readings should be recited in the 2nd and 3rd nocturns within the Octave of the Most Holy Rosary, when there are no common readings for the Octaves of the Blessed Virgin Mary to be found in the Octave?

Question VI. According to the decree of June 8, 1709, in Bracharen, at III, on the 6th and 7th days within the Octave of the titular feast of the Most Holy Trinity, the Office of the 2nd and 3rd days within the Octave of the Body of Christ should be performed, with the commemoration of the Most Holy Trinity; but the special rubric of the Roman Octave states: "If the feast of the Most Holy Trinity is the title of the church, then the Octave of the same is celebrated with the commemoration of the Octave of the Body of Christ." Which of these two statements should be followed?

[*Latin ed. p. 511*]

I. Question VII. When the octave of the Most Holy Trinity coincides with the following feast of double rank, should the commemoration of the aforementioned octave be omitted?

II. Question VIII. Since the feasts of Saint Joseph and the Immaculate Conception of the Blessed Virgin Mary have been established as feasts of the first class, is it permissible to celebrate a solemn Mass for the repose of the soul, in the presence of a corpse, on these days, as is done on the weekdays of the second and third days after Easter and Pentecost?

III. Question IX. When the feast of Saint Gabriel the Archangel is celebrated with a rite of double rank, as its patron or titular feast, should complete Vespers be celebrated for it, with the commemoration of the following Saint Joseph, or for Saint Joseph with the commemoration of the preceding Saint Gabriel?

IV. Question X. When the feast of the Most Holy Redeemer coincides with a votive office of the Most Holy Sacrament, should the commemoration of the aforementioned votive office be omitted in the Vespers?

V. Question XI. In the general rubrics of the Missal, Title XVII, No. 5, concerning kneeling in the choir during Masses on weekdays of Advent, etc., should everyone in the choir kneel, from the words "Sanctus" until "Peace be with you," inclusive, or exclusive?

VI. Question XII. In almost the entire diocese of Luçon, there is a custom

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of singing Masses that are requested by various faithful during the week, omitting the "Gloria" and the "Gradual" or "Tract" in the choir, and also the "Sequence" or "Creed" if they are to be recited, so that the single cantor might be able to perform all the chants of the Mass alone, and so that the people might better endure the length of the Mass, especially on weekdays. Is it permissible to maintain this manner of singing Masses, or should such a custom be eliminated as an abuse?

VII. Question XIII. Is it required that in mere parish churches, where there is no obligation of a choir, the Vespers that are sung for the devotion of the people on Sundays and feast days, conform to the Office of the day as found in the Breviary, or may they be taken from another Office, for example, of the Most Holy Sacrament, or of the Blessed Virgin Mary?

The Sacred Congregation, after carefully considering the aforementioned questions, and upon the request of the undersigned Secretary and another of the Masters of the Apostolic Ceremonies, decided to respond as follows:

I. Negative.

II. The Preface of the Nativity, as on the feast day.

III. The readings of the feast day should be repeated.

IV. Affirmative.

V. As in III.

VI. The decree cited in "Bracharen" should be observed (1).

(1) "BRACHAREN". 3. Concerning the days of...

[*Latin ed. p. 512*]

512 „APPENDICES. To Question VII: The rubrics concerning concurrence are to be observed. To Question VIII: No. To Question IX: The complete Vespers of Saint Gabriel are to be celebrated, with due solemnity, as befits the patron or titular feast of the Church, with the addition of the commemoration of Saint Joseph. To Question X: No. To Question XI: Inclusive, up to the Pax Domini, by the celebrant. To Question XII: This custom, concerning which, in this case, must be entirely eliminated, as it is an abuse. To Question XIII: It is permissible to sing the Vespers of another Office in this case, provided that those who are bound to recite the canonical hours privately recite them from the Office of the day. And thus it was written, declared, and ordered to be observed. December 29, 1884. ISOLANA. The current parish priest of the Church under the title of Saint Mary Magdalene the Penitent, located in the place commonly called Casamiccio, in the territory of Isclana and the Diocese of Isclana, humbly submitted the following questions to the Sacred Congregation of Rites, with the consent of the Most Reverend Ordinary, for a suitable solution, namely: Question I. Can the aforementioned parish church, under the stated title, be dedicated to the Most Sacred Heart of Jesus, if it has collapsed due to an earthquake and

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has been rebuilt? Question II. Can a statue of our Lord Jesus Christ, with the Sacred Heart exposed, be placed above the main altar of the aforementioned church, and at His feet, a representation of the most holy Mary Magdalene, rolled in a cloth? And the Sacred Congregation, after mature deliberation on the report of the undersigned Secretary, judged it fitting to respond to the aforementioned questions as follows: To Question I: Affirmative, provided that Saint Mary Magdalene is retained as the titular saint. To Question II: Nothing prevents this in any case. And thus it was declared and written. January 16, 1885. Regarding the Office, because it is more fitting for the Body of Christ, should the nona [ninth hour] also be celebrated on those days, or should it be omitted, due to the octave of the Body of Christ? To Question 3: On the 6th and 7th days within the octave of the Most Holy Trinity, the Office of the second and third days within the octave of the Body of Christ is to be celebrated, with the commemoration of the Most Holy Trinity. June 8, 1709.

[*Latin ed. p. 513*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF SAINT PAUL IN BRASILIA, A QUERY REGARDING THE FORM OF COMPETITION. August 3, 1889. Session 24, Chapter on Regulations. SUMMARY OF THE AGREEMENT. The Bishop of São Paulo in Brazil reported: The canonical chapter of the cathedral, which was the only one to participate in the competition for the dignity, presented a petition and other documents proving the suitability of the candidate, but, within the prescribed deadline, included his name in the list of candidates, and added further documents to those previously submitted. The Apostolic See, through the Apostolic Delegate, granted permission regarding the irregularity; however, a doubt remains concerning the interpretation of the Constitution *Cum Illud* of Benedict XIV. The Vicar General maintained, based on the aforementioned omissions, that the competition was not nullified; the contrary was asserted by a lecturer in Canon Law at the Diocesan Seminary, who added a section to his published lectures on ecclesiastical law to support his opinion. Therefore, the Bishop himself was asked: whether, according to the substantial form as taught in the professor's appendix, the prescriptions contained in the Constitution *Cum Illud* regarding ecclesiastical benefices should be observed, so that none may participate in a competition in which these prescriptions are not followed. Regarding these matters, it was decided to inquire the opinion of a consultant, which is presented in summary below. - Note. Although the Holy Congregation does not resolve the proposed doubts, it is deemed appropriate to present the opinion of the Consultant; who has gathered much that is useful and worthy of knowledge on this subject. To this should be added whatever was reported in Volume VII, pages 353 to 379; in that place are collected those documents through which a more efficient method is presented for better

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implementing the Tridentine regulations regarding competition, by means of preliminary parish assessments. Acts, Volume XXII, section XI, page 33.

[*Latin ed. p. 514*]

514. Saint Paul in Brasilia: A Synopsis of the Discussion. OPINION OF A CONSULTOR. This [consultor] observes that the doubt raised by the Reverend Bishop does not pertain to a specific, undecided case, but rather to a purely theoretical question, or rather, to some disagreement between a student of canon law in the episcopal seminary and a former vicargeneral; furthermore, it is difficult to understand the complaints regarding a supposed grave disrespect for the authority of the diocese, given that the judgment of the vicargeneral in practice appears to be insufficient, and at least in appearance, seems to contradict the apostolic rescript by which the validity of the act was granted, which the vicargeneral declared to be valid. However, it must be conceded that, solely on the basis of that apostolic rescript, the opinion of the student of canon law is not sufficiently substantiated, nor can it be said that a recourse to the Apostolic See is necessarily required in this case. For, it is not uncommon for such rescripts to be granted as a precaution and to settle disputes, not because of a strict legal necessity, and in the case presented, those two formalities were either absolutely necessary for the validity of the act, or they were not. If they were not necessary, the recourse may have been superfluous, because the act was entirely valid; if, however, they are to be considered as two substantial formalities within the time limit specified in the edict, then no one legitimately gave their name to participate in the competition, since there was only one candidate, and that candidate, in the circumstances, did not include his name in the list of candidates. In this case, although the Bishop acts prudently and commendably if he promulgates the edict by which the clergy are again invited to participate in the competition, he is not strictly bound by law to do so. Therefore, since only one cleric was present who desired that office, and he was otherwise worthy and suitable, the collation made in his favor, without a new competition, would have been upheld as valid under common law, unless a special pontifical law or a provision of the founding law should object. Cf. Leuren, *Forum benefic.*, P. L, q. 185. The vicargeneral, in his judicial sentence, denies that the omission of the two formalities rendered the competition entirely null and void; indeed, the defect of the insertion of the name in the list of candidates seems to him to be of such slight importance that, in the reasons given in his judicial sentence, he does not even mention it, but only deals with documents submitted after the legitimate time had elapsed. From this, it is clear how much the assertion of the student must be restricted and limited.

[*Latin ed. p. 515*]

Saint Paul, in Brasilia, concerning a matter of canon law, has interpreted

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the constitution of Benedict XIV in a manner contrary to the decisions of the Holy Congregation. The Vicar General did not, indeed, interpret the entire constitution "Cum illud," but only concerning two formalities, omitting all other considerations, and rendered his judgment. On the contrary, a canon lawyer, in order to demonstrate that those two formalities are substantial requirements, proceeded to argue that everything prescribed in the constitution "Cum illud" by Benedict XIV must be considered as pertaining to the substantial form of the concurrence. It is therefore evident that the assertion of the canon lawyer and the broader argument extend further than the judicial judgment of the Vicar General. Finally, the judicial judgment rendered by the Vicar General, if limited to those two formalities, does not appear to lack its legal foundation. For that formal insertion and writing in the catalog of those concurring is not to be considered as a formality necessary for the validity of the concurrence, unless it is expressly proven by the text of the law, especially since we are dealing with a formality of such slight importance, and nullities of acts must be proven, rather than asserted as being highly objectionable. But no text of the law can be cited that defines the nullity of an act due to the omission of this formality, and those that are presented by the canon lawyer are entirely irrelevant and of no consequence whatsoever. Therefore, it is justly the case that in the case brought before the Sacred Congregation, volume XL, page 83, no consideration was given to that omission, since it was sufficiently established that there was an intention to concur. And this, without a doubt, occurred in our case. For he who transmitted the majority of the required documents for the concurrence within the legal time to the competent ecclesiastical authority sufficiently demonstrates the intention to concur. Indeed, even if someone were to submit their name after the deadline, they should not be excluded from the examination of the concurrence, provided that they are still within the scope of the matter, that is, the examination of the concurrence has not yet been completed, and they can demonstrate that they were detained by a legitimate impediment. Thus, as Leurenio, *Forum benefic.*, p. 1, q. 182, responded, the Sacred Congregation held the same opinion, and the Rota and those who followed, Corrad., Garcias, Scavini, adopted the same judgment. Indeed, the benefit of the Church requires that more opponents concur, and the time limit set in the edict does not serve to completely exclude other competitors, but rather to ensure that it is known that no further time is to be expected. Cf. also Act. S. Sed. vol. XL, p. 84 and 89, vol. XVII, p. 590.

[*Latin ed. p. 516*]

516 Of Saint Paul in Brasilia. Finally, the nullity of the competition could not be declared again, for this sole competitor, having exceeded the deadline, but the examination of the competition not yet having been held, added a document to the other documents already presented within the

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legally prescribed time. Indeed, Benedict XIV in the constitution "Cum illud" § 16, n. II, prohibits that "after the said deadline has elapsed, any documents whatsoever, of whatever kind they may be, shall in no way" be accepted. But it is equally certain that the same Benedict XIV in L. c. n. 6 established: "Furthermore, in rendering judgment and repairing the injury, the same judge, that is, the court of appeal, shall consider only the evidence presented in the records, both with respect to doctrine and with respect to other merits. Because, from the public announcement until the day of the competition, only a period of time has elapsed which was sufficient to present the necessary proofs, attestations, and other documents of merit; therefore, in order that any means of fraud may be prevented, we have willed and strictly command that said attestations, whether judicial or extrajudicial, and any documents whatsoever, diligently sought and, as they say, discovered after the competition, shall in no way be accepted." These words clearly demonstrate that documents presented before the competition do not lack probative value. Furthermore, the purpose of that constitution of Benedict XIV, and specifically the content of § 16, must be kept in mind. As it appears from § 15 of the cited constitution, Benedict XIV did not wish to completely abolish the remedy of appeal in this matter of competitions, but he also considered it necessary to prevent "unscrupulous... men from cleverly diverting the remedy of appeal, which is instituted for the protection of justice, to the defense of injustice." Indeed, these laws of justice are violated if, in the appellate judgment, a decision is not rendered regarding the dignity, honor, knowledge, and aptitude that actually existed at the time of the examination, but rather regarding knowledge acquired after the examination, and regarding honor that pertained to documents "discovered" after the competition. But in our case, the judgment was not rendered in the appellate court, and the documents, at least, were presented before the competition. Therefore, nothing was done that was contrary to the intention of Benedict XIV. Regarding the professor of canon law who sought to challenge the judgment of the vicar general, the Consultant stated that all the allegations presented by him were irrelevant and proved nothing against the judgment of the same vicar general; which is clearly evident. Having concluded this, he gives his vote to the Bishop and says: "and..."

[*Latin ed. p. 517*]

The question posed by Saint Paul in Brasilia 517 does not have practical importance; for it has already been resolved by the decision of the Roman Pontiff, nor is a response requested concerning only the two formalities about which a judicial decision has been rendered by the Vicar General, but concerning all formalities whatsoever, as prescribed by Benedict XIV in the constitution "Cum Illud" regarding the requirements for admission. Therefore, it is clear that the question pertains to the interpretation of an

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entire apostolic constitution, and it has never happened that the Sacred Congregation has investigated all and each of the formalities, but rather, in specific cases, responses and judicial decisions have been given concerning particular doubts. Therefore, it seems that the doubt proposed by the Reverend Bishop, with imprecise words, should be more accurately defined, so that the object to which a response is to be given may be better understood, and so that the number of doubts may not increase too much, since, concerning questions pertaining to the examination for admission, a certain large catalog can easily be compiled. Hence, 1. if the words "Whether for the substantial form absolutely" appear in the doubt, the question seems to refer to those formalities by which, if not observed, the admission itself is null and void by law, not merely rescindable at the request of the injured party or ex officio, or illicitly celebrated because of a law prohibiting it by the Church. 2. Since only the constitution "Cum Illud" is mentioned, and not the Tridentine Council, Session 24, chapter 18, concerning appeals, nor the constitution "In Conferendis" of Pius V, the investigation must be extended. 3. It appears that the doubt concerns only the examination for admission, and not those things that precede the examination, nor the appeals that may follow the examination. Therefore, even in the constitution "Cum Illud," the interpretation should be limited only to §§ 10, 11, 16, and notes III, IV, V, since §§ 10 and 11 more perfectly and clearly repeat the enactments of the Tridentine Council, and in § 16 the entire controversy is reduced. 4. Finally, if in the petition there is mention of admission "to ecclesiastical benefices," then the question must be restricted to ecclesiastical benefices expressly mentioned in the constitution "Cum Illud," and to those to which that constitution has been legitimately extended. With these observations made, the doubt of the Reverend Bishop could perhaps be expressed in other words, so that both that particular controversy between the Vicar General and the canon law student, and the completely general question, may be better distinguished.

[*Latin ed. p. 518*]

I. QUESTION: "Whether those two formalities, concerning which the Vicar General rendered a judicial sentence in the case, are so substantial that, even if one of them is not observed, the agreement itself is, by law, null and void, if the Constitution *Cum Illud* of Benedict XIV, which is to be observed according to common or special law in the canonical provision of an ecclesiastical benefice, is to be observed?"

II. QUESTION: "Whether all and each of the formalities prescribed by Benedict XIV in the Constitution *Cum Illud*, especially § 16, nos. II, III, IV, V, are so substantial that, even if one of them is not observed, the agreement itself is, by law, null and void, if the Constitution *Cum Illud* is to be observed according to common or special law in the canonical provision of an ecclesiastical benefice?"

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ANSWERS:

I. Practical Answer: "Regarding the practical and particular question that arose in the collation of the dignity of a singer, due to two formalities not observed, a rescript from the Holy Fathers has been provided; regarding the theoretical and general question, consult approved authors, and if, in the future, a particular question arises concerning the interpretation of the Constitution *Cum Illud* in particular cases, appeal to the Sacred Congregation: finally, regarding the canon lawyer, let him use his own law, and proceed according to the form of the sacred canons."

II. Theoretical Answer: "To Question I: 'Negatively, provided that the name is given and the documents are presented, the matter still being integral or the agreement not yet having taken place, and a legitimate impediment is shown.' To Question II: 'Negatively, unless in cases expressly stipulated by law.'"

The question proposed by the Bishop, as we have indicated above, does not refer to a particular canonical provision, a practical question, due to a certain defect that may be substantial; for if doubts could ever have arisen concerning the valid collation of the dignity of a singer, all practical difficulties have been completely removed by the healing rescript of the Holy Fathers, and it could only be imprudently doubted that the value of that provision would be questioned because of a formality not observed.

[*Latin ed. p. 519*]

In Brasilia, 519. Therefore, the controversy that remains to be resolved is purely theoretical and general. However, it can scarcely be denied that certain serious doubts exist, for which reason it may perhaps be advisable to refrain from a direct and definitive response. These doubts are addressed through the form of a practical response. But truly, there exists no practical necessity for such a magistral interpretation, and the difficulty arising from the published "appendix" can be resolved by other legal remedies. Furthermore, there are examples by which it is proven that controversies have been definitively settled by authentic interpretations of learned men, if they were general, and that practical utility has resulted, as is evident from the manner in which Boniface VIII acted in the case of the Sæcular Canon. Cf. Leuren, *loc. cit.*, page 183. But because of a certain literary dispute between a simple canon lawyer and a former General Vicar, it does not immediately appear that the authority of the Sacred Congregation should be interposed; otherwise, perhaps many learned men would exist who would propose their canonical controversies to be decided by a benevolent Bishop of Rome, with considerable inconvenience and little benefit. Finally, Santi writes with the best of intentions, *Praelectiones iur. can.* I, volume 31, number 49: "We observe that the resolutions of the Sacred Congregation of the Council are often not in a general and abstract form, indeed, it is now the ordinary practice of the same to resolve particular questions and to ap-

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ply the established law to specific cases. The usual formula is: whether it is the case that the validity of the marriage exists in this case..." Truly, in favor of the doubt proposed by the Reverend Bishop, no solid reason seems to be able to be alleged, why one should deviate from the "ordinary practice" of the Sacred Congregation, and not only give a response "in a general and abstract form" regarding one question, but to resolve one controversy, when an authentic and general interpretation is granted to an entire apostolic constitution, with many parts of which a general investigation has not yet been made by the Sacred Congregation up to this point. Furthermore, in this matter, there does not exist only one controversy, but there are several controversial questions and issues that are debated among learned men. Cf. *Acta S. Sed.*, volume VII, page 350, against Relusius; Passerin, *De elect.*, chapters 29 and 30; Leuren, *Z. c.*, p. I, question 189; Benedict XIV, *De synod. dioec.*, book IV, chapter 7, number 6, which do not seem to be resolved in such a way that one could easily resolve them. Finally, all those formalities scarcely seem to be observed everywhere so strictly, that doubts might arise about the validity of the collation of parochial churches, which would be better avoided.

[*Latin ed. p. 520*]

520 In Brasiliae, a Doctor of Canon Law, before the publication of his work, obtained the approval of the diocesan Bishop, or not; in the former case, the Doctor of Canon Law should certainly be treated with kindness, and the Bishop ought to attribute any difficulties arising from the revision of the book to his own excessive leniency; but if the Doctor of Canon Law omitted to request the Bishop's approval, he violated the canonical statutes, for there can be no doubt that books containing canonical discussions are also subject to prior ecclesiastical censorship, according to the discipline currently in force in the Church. Cf. Collectio Lacensis Conciliorum, rec. t. V, p. Quare the Ordinary of the place should avail himself of his right in this case: and it seems entirely necessary to abstain from the imposition of censures, because those few lines in the appendix, written in a somewhat imprudent manner, do not constitute a crime of lese majesty, and perhaps in these regions of Brasiliae, ecclesiastical censorship of books is not exercised with such rigor, so that a paternal admonition to change the appendix would suffice. If a direct and positive answer seems to be required, it is contained in the two theoretical answers given above, of which the former resolves the theoretical question of double formality, which is the only one controversial in practice, and the latter addresses the completely general question of all formalities and conditions set forth in the constitution "Cum Illud." It seems necessary to answer negatively to the former question, with the twofold limitation that the matter is still pending and that a legitimate impediment has been demonstrated. And certainly, Scripture is not required in a legitimate act, unless expressly provided for

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by law, and therefore, for greater security and proof, the presentation or institution is often recorded in writing, not because of the value of the act itself, but for the sake of record. Cf. Leuren. For. benef p. II, q. 186. It is not proven by any legal text that the names of the candidates must be inserted in a written list within the time limit specified in the edict, under penalty of nullity of the competition. In the Council of Trent, Session 24, chapter 18, De Reformatione, these words appear: "Furthermore, the Bishop shall appoint... it is permissible... to submit the names of..." but it is not prescribed that this must be done in writing. And although it is said later that those "who have been described" must be examined, those words contain a fact, not a precept, and the word "described" admits a broader meaning and must be explained according to the precedents, where the matter is of names submitted and candidates nominated. Therefore,

[*Latin ed. p. 521*]

521 It is not surprising that the Sacred Congregation of the Council of Trent, as previously cited, considered the absence of a scriptural passage to be of no consequence in the matter. However, the principle that the validity of a nomination should endure over time, provided the circumstances remain unchanged, is primarily derived from a declaration of the Sacred Congregation of the Council of Trent, issued around the year 1600, in which, in response to the question: "If, upon the occurrence of a vacancy in a benefice, and in the process of providing for it, more than one candidate presents themselves within the term specified in the edict, and if, after the expiration of that term, another candidate appears with a valid claim, should that candidate be admitted?" the answer was: "Certainly, if the circumstances are valid, that candidate should be admitted." Furthermore, it cannot be argued that Pope Benedict XIV's constitution "Cum Illud" superseded this principle. For a general law cannot abrogate a specific provision that precedes it, especially if it is not directly and expressly opposed to it. This is the case in our situation. Moreover, the Sacred Congregation of the Council of Trent, even after Pope Benedict XIV's constitution "Cum Illud," appears to have maintained the principle that a candidate who appears after the deadline, but with valid and demonstrated impediments, should be admitted to the examination. For in the case of Lancianeno, on September 19, 1761, after a previous competition had been annulled, a new competition was ordered before the nearest bishop, and as can be seen from the preceding discussion, "the priest Angelus Andreassi" strongly contested his rejection, arguing that a candidate had appeared who still possessed a valid claim and had demonstrated legitimate impediments, and that his reputation had been unjustly impugned by calumnies. However, if the circumstances are no longer valid, but rather the competition has already been held, or the collation has been freely made, or a canonical institution has been performed, it is clear that the candidate who appears later must be rightfully rejected.

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For the edict, with its specified time limit, at least ensures that after the expiration of that time, no further waiting is required, and the process can proceed. Therefore, the subsequent acts are legitimately performed, but legitimately performed acts should not be rescinded, unless it is expressly provided by law. This is not the case in our question. Furthermore, this assertion is confirmed by analogy of law, since in similar cases, the same legal provision applies. Thus, for example, although a lay patron has the right to vary a presentation within the time granted to him by law, a second presentation made after the canonical institution of the cleric originally presented is ineffective, as is clear from chapter 24, title 1, paragraph 38 of "De Jure Patronato." Finally, the second clause regarding a "demonstrated legitimate impediment" also appears justified. For it is a certain and undeniable principle that time is not counted when it is legitimately impeded, unless a special provision to the contrary is made.

[*Latin ed. p. 522*]

522 Saint Paul in Brasilia states an exception: but it is not certain that this exception exists; therefore, a competitor who presents himself for the examination, with the matter still in its original state, and proves a legitimate impediment, must be admitted. This opinion is not only confirmed by natural and canonical law, but also by the authority of Doctors, who widely teach that those legitimately impeded must be admitted, cf. for example, Garciam, *De beneficiis ecclesiast.*, p. 9, chapter 2, n. 205; Ferraris, *Ad V. Concursus*, art. Ö, n. 17; Scavini, *Theol. moral.*, I, 3, n. 69. Indeed, sometimes in episcopal edicts, this clause is added with these or similar words: "After the prescribed term has elapsed, unless a legitimate impediment is demonstrated, no one, except those already registered, will be admitted." Cf. *Act. S. Sed.*, vol. 17, p. 591 and following. What has been demonstrated regarding the giving of names, seems also to apply to the presentation of documents. For this formality cannot be required so strictly, that no examination is valid if, after the time has elapsed, documents are presented because of a legitimate impediment, when the matter is still in its original state, because in other legitimate acts, such strictness is not observed, and before the Constitution of Benedict XIV, this formality was not prescribed with such severity; indeed, Pope Benedict XIV, as can be seen from the cited Constitution "Cum illud," § 16, changed the ancient law in this matter. Furthermore, the words of the Constitution "Cum illud," § 16, n. II, do not contain a law that invalidates the examination, nor are there any clauses that invalidate the examination in the special part of the Constitution, nor does the purpose that the Holy Father had in mind stand in the way. For he intended to avoid frivolous appeals with his new regulations, and to ensure that in the appellate judgment, the same examination and the same documents are considered as in the first instance. Indeed, if documents are presented after the time has elapsed, but while the matter is still in its

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original state, this purpose is perfectly achieved, and because of the added clause regarding a demonstrated legitimate impediment, the examination cannot be changed due to negligence or carelessness. Furthermore, to the other question, which in substance contains the doubt proposed by the Reverend Bishop, it does not seem that an absolute and general affirmation should be given, but rather a solution that is restricted and limited to certain cases expressly provided for in law seems preferable. For the nullity of an act is not asserted, but must be proven; therefore, if an act is presented, one must stand by the validity of the act, until the nullity is demonstrated: and for this reason, the Sacred Congregation often responds that the nullity of an act "is not certain."

[*Latin ed. p. 523*]

S. PAULI IN BRASILIA 523> Regarding the validity of a marriage, the case of Ferent, decided on December 7, 1725, is relevant. In that case, the validity of the marriage was not declared, but it was shown that the nullity had not been proven by certain arguments. Cf. Aeta S. Sed. vol. 6, p. 352. What holds true for particular cases also applies to the general law. Indeed, a certain general law, especially when it contains as many formalities as are found in the constitution "Cum illud," must not only be asserted to be truly invalid with regard to all and each of those formalities, but must also be demonstrated by certain arguments. For a law that is invalid is either, by its very nature, penal, or, in those cases in which it does not inflict a penalty by the intention of the legislator, it is certainly very odious. Cf. Suarez, De leg. I. 5, cap. 19. Furthermore, it is certain that not every ecclesiastical law that prohibits something is also an invalid law. "Because many things are prohibited, which, if done, obtain the strength of validity," as Innocent III says in chapter 16 X de regular. (III. 31), and the same is demonstrated by numerous examples of canon law. Cf. Suarez I. c. cap. 29. Now, the necessity of repeating all those formalities prescribed by Benedict XIV in the constitution "Cum illud" for the validity of a marriage can be demonstrated either from the nature of the matter itself, or from the relationship of this constitution to the Council of Trent, Session 24, chapter 18, de reform, and the constitution of Pius V "In conferendis," or from a subsequent declaration by the Holy See or the Sacred Congregation, or from the common and certain opinion and interpretation of doctors and from practice. I. It cannot be demonstrated from the nature of the matter itself that such a necessity exists. For that prohibition of Benedict XIV would have the force of an invalid law by its very nature if an act contrary to it were deficient in some substantial element of validity from the nature of the matter itself, or if it contained an intrinsic and perpetual malice, or a lasting turpitude, as Schmalzgrueber states in his dissertation, prooem, n. 70 and 71, with Suarez and Wiestner. But neither of these can be said, since Benedict XIV himself admits that the marriage of Trent could have

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been validly performed in various ways, even without observing many of those formalities, and only with the recommendation of Clement XI and the prescriptions of Benedict XIV. II. Nor can the argument be deduced from the relationship to the Council of Trent and the constitution of Pius V "In conferendis," a) For although the Council of Trent, Session 24, chapter 24, de ref., and the constitution of Pius V have a clause that is invalid, yet...

[*Latin ed. p. 524*]

524 Saint Paul, in Brazil, possesses no special or exclusive privileges, but the examination, whether oral or written, may concern the same subject matter or a different one, as is evident from the writings of Benedict XIV, § 19, and it was in that very city that Innocent XI introduced the practice of presenting the same question to all candidates, assigning them the same time, and requiring written answers. Furthermore, the Council of Trent, in its final session, cited in chapter 18, states: "It shall also be permissible for the provincial synod, if it shall deem it necessary to add or remove anything concerning the form of the examination, to provide for it." These words do not affect the substance of the examination at Trent, in which the power to make changes, without a special apostolic privilege, was never recognized for the bishops, but, as the very wording suggests, they refer to a variation in the form, which can exist without altering the substance.

b) Moreover, despite the clauses that appear to contradict it, and session 24, chapter 18 of the decrees and constitutions "In conferendis," they do not exhibit a sanction that is absolutely necessary for the validity of the act. Thus, for example, in the Council of Trent, 1st session, it is required that the examiners swear "by the holy Gospel of God." The Sacred Congregation of the Council has repeatedly declared that this oath of the examiners is essential for the validity of the examination, and this is the common opinion of the doctors, cf. Leuren, p. 1, q. 189, but there is no consensus among the doctors regarding the necessity of mentioning the Gospels and other additions to the oath, cf. Leur. 1, c. Benedict XIV, De synod, dioec, L 4, op. 7, n. 6. Furthermore, despite the prohibition of Pius V, § 5, of the constitution "In conferendis," the Sacred Congregation of the Council, in the Portuguese case of March 30, 1737, generally considered it permissible to extend the deadline beyond 20 days, if there is a just cause or some impediment.

c) Finally, what is written by Reclusius regarding this matter should not be disregarded: "This decree, with its contradictory clauses, is as if it were not present, and the clauses that are lacking in the cited encyclicals and in the Benedictine Constitution are also as if they were not present. Since the Sacred Congregation of the Council, or Clement XI and Benedict XIV, in the aforementioned passages, refer to the Council of Trent and the aforementioned Constitution. Therefore, it would be absurd to interpret them differently..." However, the editors of the Acts of the Holy See, volume VII, p. 350, refute this seemingly plausible argument of Reclusius in this

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way: "For, they say, Reclusius has not noticed that the Sacred Congregation has indeed admitted a certain particular form of examination, but has prescribed it in such a way..."

[*Latin ed. p. 525*]

In the matter of S. PAULI in BRASILIA, 525 cotton, as can be seen in the response to the first objection in the case discussed on November 16, 1720... He does not notice that the Constitution of BENEDICT, "Cum illud," refers almost entirely to the Instruction of CLEMENT XI, which it explains more fully. Therefore, one could argue against Reclusius in this way: it would be absurd if, when referring to a report, we interpreted it differently, but BENEDICT XIV refers to the Instruction of CLEMENT XI, which consists entirely of an exhortation; therefore, the Constitution of BENEDICT consists of an exhortation. I admit that this conclusion is false, because BENEDICT XIV not only exhorted, but also prescribed the order in which things should be done, an order which, through long use, has been recognized as useful, and which can be equivalent to a clause that renders something invalid. He does not notice that any law can be referred to another in multiple ways. A law can be referred to another by interpreting and innovating it, as the cited Constitution of PIUS V is referred to the disposition of the COUNCIL OF TRENT, and in this case, this law easily takes on the nature of the other; but it can also be referred to another by explaining a way in which this other law is more suitable for execution, in which case the law does not take on the nature of the other, but rather determines a particular method of execution.

III. It is not derived from the Constitution of BENEDICT XIV, "Cum illud," that all and each of the formalities enumerated therein are prescribed under penalty of nullity. If someone were to argue that no valid consent is produced if §§ 10 and 11 of this Constitution are not observed, this must be denied, since in those paragraphs the law of the COUNCIL OF TRENT is reiterated and renewed, and no one doubts that § 16, n. 4, commends, but even prescribes, the form of CLEMENT XI with these words: "Let the consent be obtained by the Bishop, observing carefully in all respects the form given in the aforementioned documents, published in the year 1721, and let the entire series of events that took place be carefully recorded in writing," but it does not seem possible to demonstrate with certain and conclusive arguments that all the formalities of § 16 and the Instruction of CLEMENT XI were established as substantial conditions for the validity of the consent.

a) For the commendation of CLEMENT X, not only in the law, but truly as a law that renders something invalid, was changed by BENEDICT XIV, and this is not derived from the tenor of the Constitution "Cum illud," in which, in no way, are those words used with which laws that render something invalid are usually enunciated, cf. SUAREZ, L. c., cap. 26, v. g.

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"ipso facto, ipso iure non valeat, careat robore firmitatis;" nor is it deduced from the clause...

[*Latin ed. p. 526*]

§26 In Brasilia, in the case of St. Paul, certain clauses, which are irritating to some and which, in certain circumstances or at the end, are deemed to be invalid, have not been established, nor can these arbitrary clauses, which Reclusius refuted above, be supplemented by that same reasoning. Therefore, since it cannot be proven by law that these clauses are invalid for all and for each individual case, we must adhere to the more lenient interpretation, that is, to the law that is purely prescriptive, unless a specific argument demonstrates an exception. b) This more lenient interpretation also seems to be recommended by internal arguments. Indeed, there are already so many conditions that contribute to the value of the act in question, due to the number and quality of the examiners, the oath, and other additions, that in such a serious matter, clauses that render the canonical provision invalid should certainly not be increased. Furthermore, the intention of Benedict XIV in the cited constitution was not to completely reject appeals, but rather that the Roman Pontiff wished to make them more difficult and less frequent, and, above all, to correct the constitution of Pius V with respect to this matter, for the sake of the safety and well-being of men. This objective would hardly be achieved if competitors were allowed to challenge the validity of the competition for every minor formality, perhaps of little importance, that is omitted. e) For example, § 16, no. 3, prescribes: "On the day of the competition, the episcopal chancellor shall summarize in writing the merits, qualities, and requirements of each candidate, as they have been faithfully ascertained from the documents presented in due time, and a copy of this summary shall be given not only to the Bishop or the general vicar in his place, but also individually to all the examiners participating in the competition." But can anyone truly believe that there is no competition if this written summary of the merits is not presented to each examiner, but rather if three or four original documents, already known to the Bishop and the general vicar, are given to the examiners to read before the competition, even without the summary? Or should the competition be declared invalid if the "summary of requirements previously distributed" is not given again to the chancellor, nor is it combined [with other documents], nor is it kept in a secret archive, as prescribed in § 16, no. 5? d) Furthermore, in the instructions of Clement XI, it is written: "Fourthly, all those competing shall be locked in the chapter house, so that while they are writing, no one of them shall leave, nor shall anyone else enter, except after they have finished writing and presented their work. Fifthly, that each one shall write their answers and their commentary with their own hand and sign them... Finally, that each answer and each commentary, when presented by each

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of the competitors, shall not be..."

[*Latin ed. p. 527*]

S. PAULI in Brasilia 527: "Let it be signed by him who wrote it, and by the secretary of the examination, as well as by the examiners and by the Ordinary or his Vicar, who were present at the examination." These formalities, subject to a better judgment, appear to be required not for solemnity, but for the purpose of proving the act, so that frauds may be avoided, and it may be authentically established in an appellate judgment that the examination took place. And indeed, if anyone attempts to take the examination by means of a substitute, as is said in the constitution of Benedict XII, "Quoniam," 1339, cf. also the constitution of Paul IV, "Inter ceteras," 1557, or if there is suspicion of clandestine transmission of answers, as there was in the case of Benevento on May 25, 1844, cf. *Causae selectae* S. C. C., p. 772, there can be no doubt that the examination is null, because in examinations, personal effort is essentially required, and fraud and deceit should be permitted to no one, especially if other competitors were unjustly excluded. However, the omission of a strict seal in one conclave, if it is certain from elsewhere that no fraud occurred, does not necessarily render the unsigned document invalid, for in cases where the names, as often happens, cannot be read by anyone, which can be certainly proven from elsewhere, it seems difficult to admit that the examination is invalid. e) Finally, as is required in the cited Instruction of Clement XI, "that the answers should be upon the Latin, but the explanation should be given in the language commonly used by the people," one may reasonably doubt whether these "Latin" answers are necessary for the validity of the examination. For, as can be seen from the discussion in Benedict XIV, § 19, questions are proposed in Latin, so that "from the Latin answers, it may be well determined whether they are ignorant of the Latin language, and thus whether they have the capacity to understand and explain the Council of Trent." But this knowledge of the Latin language can also be ascertained by the examiners from the testimonies presented and from the explanation given of the Council of Trent itself. Furthermore, the examination is not an examination of the Latin language, but of suitability for the care of souls, and from a single Latin answer, e.g., on a certain dogmatic, moral, or canonical question, that purpose is sufficiently achieved; otherwise, in all those dioceses in which not all answers are written in Latin, but perhaps only one, the examination would have to be considered invalid. Which is hardly possible. IV. Finally, after Benedict XIV, there is no apostolic constitution which clearly declares in explicit terms all and each of the forms—

[*Latin ed. p. 528*]

528 Saint PAUL in Brasilia establishes regulations concerning examinations. "Since" it is required to conform to a certain standard, there does not

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exist a general decree of the Sacred Congregation of the Council, by which the doctrine of Reclusius is approved, but rather, it has given answers to particular doubts presented to it; indeed, the Sacred Congregation, with regard to the matter itself, seems to follow more lenient principles, as is evident from the case of Vendan, dated January 20, 1770, where the following is read: "In the Military Examination of July 21, 1753, some candidates were distressed, because a longer period of time had been granted to others to complete their tasks, but nevertheless, the question posed was: Does it follow that the examination is invalid? The answer was: No. With this resolution, the Sacred Congregation declared that it does not pertain to the essence of the examination that the same period of time be established for all." Cf. also Act. S. Sed. vol. 7 p. 348. Furthermore, arguments cannot be drawn from a common and certain opinion of canonists in favor of Reclusius. For one, Reclusius and perhaps another who seems to agree with him, cf. Acta S. Sed. vol. 7 p. 348, do not constitute a common opinion, much less a certain one, since Reclusius only supports his opinion with weak arguments. Therefore, the controversy which exists, or seems to exist, among the editors of Acta S. Sedis, should be set aside, since a reconciliation of opinions can be achieved without great difficulty, cf. Acta S. Sed. vol. 7 p. 350 and vol. XI. p. 131 and 132 and 133 in fine, and in any case, with regard to the essence of the matter, they must agree, if vol. 7 p. 350 teaches: "IV. Such rules were not prescribed by Benedict XIV with the intention of establishing a substantial form, from whose neglect the examination itself, or the examination process, would be rendered invalid and null. V. And this is evident both from the tenor of the prescriptions of the rules, and from the fact that a clause that renders the examination invalid does not accompany such prescriptions, if the contrary has occurred. VI. Therefore, in order for the examination to be declared invalid and null, it is necessary to demonstrate, for example, that the rules were not observed due to deceit and fraud, since deceit and fraud should be imputed to no one, or that the rules were neglected to such an extent that the Tridentine form itself was neglected." With these observations, the proposed points must be clarified.

[*Latin ed. p. 529*]

529 Of Saint Paul in Brazil. Doubts. I. Whether, for the substantial form absolutely required, all those things prescribed in the Benedictine Constitution *Cum illud* must be present concerning the requirements for ecclesiastical benefices, so that no requirement is valid in which these are not observed. II. Whether those two formalities, concerning which the General Vicar rendered a judicial sentence, are so substantial that, if either of them is not observed, the requirement itself is, by law, null and void, if, by common or special law, the Benedictine Constitution *Cum illud* must be observed in that case. RESOLUTION. The Sacred Congregation, having considered the matter on August 3, 1889, decided to respond: Regarding I and II, noth-

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ing is to be discussed.

(1) ASCULAN MARRIAGE. December 14, 1889. Session 24, chapter 1, concerning the reform of marriages. SUMMARY OF THE FACTS. On a certain day in the year 1865, as it is said, Angelus Bordoni and Anna Campitelli, he 40 years of age, she 22, immediately appeared before their own parish priest in Castel di Lama, in the diocese of Ascoli in Piceno, and said to each other: "This woman is my wife; this man is my husband." The betrothed, however, having done and said this not with a serious intention, but, indeed, for jest, have confessed and still confess. However, present at this act, although, as it is asserted, by chance, were Livia Agostini, the sister of the same parish priest, and Angela Corradetti, the widow of Amadio. The parish priest, uncertain about the validity of the betrothal, brought the matter before the episcopal curia, which, however, from the beginning, did nothing and took no action. In the meantime, however, the parish priest, on his part, retained Angelus and Anna, mutually bound in the external forum, and therefore... (1) Since the question had already been resolved by the sanction of the Holy Father, only a theoretical question remained; to which the Sacred Congregation did not wish to give an answer, since it does not usually answer in a general and abstract form, but resolves particular questions and practical cases, applying the established law. Acts, Volume XXII, page 261, 34.

[*Latin ed. p. 530*]

In the year 1830, a marriage was impeded by new impediments. But Angelus and Anna, as before, were living together, and they had made no plans to establish a mutual life together. Indeed, Angelus declared that he did not wish to take this woman, nor any other, as his wife. Anna, on the other hand, desired marriage; and since, after a few years, she had begun to give her affections to another man, to whom she hoped to be married, she petitioned the parish priest to release her from the previous bond, if indeed one existed. The parish priest again consulted the Ordinary, who, having obtained certain extrajudicial information, examined the opinion of the promoter of justice of his court and of two other canonists. But there was no agreement among these; for one of the canonists, along with the promoter of justice, declared that the act of that betrothal had not exceeded the limits of simple jest; while the other did not agree. Therefore, the Ordinary submitted the entire matter to the Sacred Congregation of the Council, along with a petition from Anna herself, in which she again declared that she had uttered those sacramental words without intention, and furthermore that she had never, either before or after, had marital relations with Angelus; and therefore she requested that they be dispensed from this impediment to marriage, as far as it exists. A response was sent to the Bishop on May 24, 1875, instructing him to conduct the proceedings, both regarding the alleged nullity of the marriage, and regarding the alleged lack of consum-

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mation of the same marriage, and regarding the causes for dispensation. After the tribunal was established, the Ordinary, through the parish priest of Castel di Lama, summoned Angelus and Anna to renew their first, whatever it may have been, betrothal with a new and legitimate promise. But since these efforts proved fruitless, Anna Campitelli, the plaintiff, appeared before the judge on March 10, 1880, and, among other things, confirmed that she had uttered the sacramental words in jest. For, she said, if I had not intended to marry, I would certainly not have done so with Bordoni, who was an old man and almost insane. These and other things were reported to the Sacred Congregation of the Council on February 6, 1881.

[*Latin ed. p. 531*]

The Asculan Bishop, in his letter, further noted the following: "From the aforementioned matters, which are contained, more or less explicitly, in the proceedings, two things seem to follow. First: that the marriage of Angeli Bordoni with Anne Campitelli was afflicted by a lack of consent and the vice of clandestinity; the former because of a jest, the latter because of the absence of one of the witnesses; for if a witness is absent, he must be considered either not a witness at all, or not a witness in any way capable of perceiving the matter to be testified. Hence, either the marriage was not valid, or at least it is not certain that it was valid. Secondly: that there is no certainty regarding its consummation; indeed, I believe it is easily demonstrated that it was not consummated, and I have considered that, if I may say so, a moral certainty is provided by all the circumstances, both preceding and subsequent, that I have recounted. This certainty and conviction are not undermined by the fact that some variations are found in the testimonies of the witnesses brought forward; for these do not touch the substance of the matter, nor do they detract from the sincerity of their sworn testimony, since they are to be attributed to the passage of a long time. Therefore, the judge, appointed by me to conduct the proceedings, and the diligent defender of the marriage, refrained from demanding a judicial examination of the woman's body, considering that the addition of physical certainty was not necessary in order to ascertain the truth; all the more so, because the woman, questioned by the judge himself, outside the order of the trial, with prudence and diligence, declared her will to be entirely averse: which, if attributed to modesty, strengthens that moral certainty; if, on the other hand, it is due to a weakening of conscience, which she may have suffered from another man in such a depraved situation, it does not, in any way, invalidate it. But to what purpose have I written these things? Is it so that I might anticipate the judgment of the Most Holy Congregation? By no means! Having transmitted, as I should, the proceedings, I deposit the entire case with the Most Holy Order, and I am ready to receive, with the utmost reverence, whatever sentence it may pronounce, and to submit all my opinions to it, as I believe them to be, indeed, just and

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wise. The intention was, above all, for the purpose of fulfilling my other duties, to present the results of the proceedings..."

[*Latin ed. p. 532*]

532. To inquire in Asculana; then to commend the woman to the Holy Congregation, so that, unless a right obstacle impervious to benign justice is found, she may, if it is permissible within the time allowed, either be declared free from an invalid marriage, or be granted an apostolic dispensation for a valid marriage, whether the doubt be absolute, or merely probable, or even, for caution's sake. Indeed, she desires, demands, and contends to have her freedom and status established with certainty for many years now, as is evident; therefore, especially from the beginning of last year until this month, she has very frequently, to the point of annoyance, both by herself and through others, urged the Parish Priest and the Curia. However, I do not consider her request to be to be scorned, or neglected, or treated lightly. She urges her case because she is herself sorely pressed, by very serious reasons which compel her to enter into marriage without delay, and therefore to pursue any possible dissolution of the previous marriage. Briefly, I will list these reasons, so that, together with those which appear in the records of the process, other, perhaps more numerous, reasons may become apparent, which lie there, as it were, dormant; and by which, whether individually or combined, the prayers of Anne Campitelli seem to gain reasonable force, seeking the power to enter into a new marriage as soon as possible.

1. Both Anne Campitelli and Angelus Bordoni constantly deny that they had any intention of entering into marriage.

2. The validity of the marriage is also doubted, and not without reason, due to the lack of a witness.

3. Neither party seeks anything from the other.

4. Indeed, Anne is repulsed by a husband of advanced age, and somewhat foolish; and Angelus is repulsed by any wife.

5. The woman is eager to marry, and is, therefore, unable to accept the words of the Gospel concerning eunuchs.

6. She has been sought in marriage several times by other men, and has lost the opportunity offered to her, due to that hypothetical impediment of the bond.

7. She currently has a good opportunity of this kind at hand.

8. She needs a husband to alleviate her poverty, as well as to provide companionship, in which she will soon be left by her sixty-year-old parents.

9. Being over thirty-seven years old, if she does not seize the present opportunity, she will remain unmarried.

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10. She is in danger of falling into incontinence.

[*Latin ed. p. 533*]

SCULANA 533 – is to be considered, because she is inclined towards marriage; moreover, because she is very poor and because she is forced to earn her living by serving in private homes. 11. It is to be feared that, being forbidden to marry, she may enter into a legal concubinage: she has threatened to do so, but has refrained thus far; however, after so many prayers and efforts that have come to naught, will she always refrain, having lost all hope of a legitimate marriage? » A Synoptic Discussion. THEOLOGIAN'S OPINION. This case, which is perhaps unprecedented, has been brought before this Sacred Tribunal, concerning a certain marriage, which some claim was falsely made, and others maintain was validly contracted. Now, the question is whether such a marriage, which we will broadly call clandestine, is valid and firm. Indeed, at first glance, this seems easy to understand; and nothing seems to be lacking for the truth. Angelus and Anna, being unmarried, without any natural or canonical impediment, without being compelled by force or fear, but freely, approach their Parish Priest, before witnesses, and express their mutual and reciprocal consent. Who would doubt its validity, when all that is necessary is present? It is certainly a grave sin for those who, unexpectedly appearing before the Parish Priest, together with witnesses, whether willing or unwilling, celebrate a marriage, as is commonly done in secret by those who intend to deceive, without causing great scandal and disorder. However, although the Church has always detested and prohibited such marriages, and this is clear from the Council of Trent, nevertheless, it has sometimes been considered valid and indissoluble: this has been defined by this Holy Congregation on more than one occasion, as can be seen in Pallotti, *De Matrimonio*, § XV. This is also noted by another Consultor of the Roman Tribunal. However, if the entire series of events, carried out by these individuals with such imprudence, is considered, perhaps nullity will appear.

[*Latin ed. p. 534*]

534. The *Ascolani*, whom we shall call *sponsi* [brides and grooms], peasants, uneducated, and ignorant of the sanctity of the Sacrament, did not perceive, nor could they have perceived, the most serious consequences that would arise, and therefore they did not intend to validly celebrate the Sacrament, although, as I shall say, materially and apparently, or as if they had played at it before the Parish Priest, which will become clearer from what follows. This is suggested by the festive and frivolous nature of the Angel, who, both with the Parish Priest and with everyone, is defined as witty, and fond of jokes, and is even called a madman, who often, as almost all the witnesses testify, approaches young girls with laughter, saying "Do you want to marry me?" or "I will marry you." Some add that the Angel

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was also burdened by drunkenness, and he himself does not deny that he was somewhat so. However, the actions of a drunken person, when they are sometimes unaware of what they are doing, are considered to have no weight. Hence, in ancient times, as Eusebius recounts in Book VI, chapter 33, an ordination made by a drunken Bishop was judged to be both valid and invalid. Anna, however, while walking with a child on her arm, was suddenly led to the Parish Priest, whom they did not expect to be at home; by chance, and not by prior arrangement, she readily agreed; she entered the house laughing, and left laughing; although afterwards, when she was admonished about what had happened, she wept before her sister Aloisia, and reproached herself. For there was neither knowledge nor a true consent of the will: nothing is willed unless it is first known. As the *Angelicus* teaches in Volume 2, Question 15, 2, properly speaking, consent is not present unless it concerns things that are done for the end [purpose]. Did these contracting parties propose marriage as an end, or rather, did they not intend to seize an opportunity for laughter? The witnesses, as we shall say, all testify under oath that this is precisely what happened, and they acknowledge the lack of internal consent on both sides. Given these facts gathered from the proceedings, it seems entirely invalid to conclude that these parties validly contracted marriage. And indeed, those who are celebrating marriage must, in all seriousness, and with all jest put aside, determine to do so, which certainly cannot be achieved unless they are guided by a true intention, and with a certain purpose. The Author of the Sacraments, Christ, willed that the administration of the Sacraments be a human action.

[*Latin ed. p. 535*]

535. Human action, moreover, cannot be valid unless it proceeds from intention; for it is not human, unless it is free, nor is it free, unless it proceeds from the judgment of reason, accompanied by the choice of the will. If these criteria are applied to our case, and compared with the testimonies of witnesses, it will appear that the marriage was performed without any true intention, and in jest, and therefore, lacking the essential foundation, it was invalid. However, the parties themselves must be heard. The parish priest himself, in a letter to the Vicar General dated September 18, 1873, seems to admit, and to believe, that the matter was done in jest and as a joke; therefore, in his examination, he testified that he did not record it in the marriage book, although he had severely reprimanded such betrothed couples; but he seemed to fear that there was no marriage, and that it was merely a joke. However, in another letter to the Vicar General, dated June 13, 1874, having changed his mind, he opines in favor of its validity. In the formal examination of 1880, the respondent stated many things that demonstrate invalidity, and favor nullity, although he does not explicitly say so. But all the witnesses called, the so-called "seventh hand," that is,

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relatives, affine, and neighbors, under oath, testify that Angelus was a man of jest, frivolous, and mocking, and therefore, this act, which appeared to be a marriage, they unanimously and in agreement consider invalid, and that it was a joke. These individuals, however, knew the character and nature of the parties involved, and therefore, their testimony cannot be doubted. "In human actions upon which judgments are based, and for which testimonies are required, there can be no demonstrative certainty, because they are contingent and variable; therefore, probable certainty suffices; and it is probable that what many have said contains more truth than what one has said" (St. Thomas Aquinas, *Summa Theologica*, II-II, Q. 70, 2). Furthermore, from the examination of the witnesses, arguments can be elicited, and indeed are elicited, which obscurely demonstrate that it was a joke. There was no prior amorous relationship, no sign of mutual affection, no agreement, either between themselves, or between the parents of either party, and much less was there any subsequent cohabitation. Angelus testified that he never intended to marry, and although...

[*Latin ed. p. 536*]

536. The Ascolan woman, after having publicly declared that she had been married, declared that she had not understood that she was merely playing at the ceremony, and that she had not intended to enter into a true marriage. Witnesses were indeed present, but neither were required nor summoned; moreover, the Bishop, in a letter to the Holy Congregation, states that he heard only the words of one of the witnesses, and not of the other, and therefore he believes that the marriage could be declared null on account of this deficiency. Anne, on the other hand, maintained a constant distance from the man, never approached him, and indeed, consistently showed disdain for him. Both were reprimanded, and they confessed that they had been mistaken, admitting that they were ignorant of the canonical laws, and that, in acting and speaking in a joking and mocking manner, they had acted wrongly. Thus, we have the testimonies of the witnesses. Taken together, I believe that all of these elements are sufficient to establish a moral certainty for declaring the marriage null, or, as will be said later, to petition the Holy See for the dissolution of a marriage that was entered into rashly and never consummated. However, since we are dealing with the Sacrament, I will not add anything further, and I will not dismiss arguments that could be put forward to support the validity of the marriage, as another theologian, requested by the Ascolan court, believed. Two points seem worthy of consideration: one concerning the legal process; the other concerning the arguments presented by the theologian. Regarding the process, there are indeed some contradictions. For example, the woman states in her written petition that she did not respond to the man; but in the formal examination, as is customary, she answered correctly: "You are my husband." There are also other contradictions, but of lesser importance,

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which do not affect the substance of the matter, since all the witnesses agree that it was a game and a jest. We should be lenient towards those who, after four years or more, were called to testify about this matter. Therefore, the value of the process depends on the procedures carried out according to canonical law. But as for the other point, the aforementioned theologian, requested by the ecclesiastical court in the year 1874, concluded from the extrajudicial documents that the marriage was certainly valid; for he did not consider it to be a mere game.

[*Latin ed. p. 537*]

CASE NO. 537: It is proven that all the elements necessary to constitute a true marriage are present, but it is called "semi-clandestine"; the contracting parties are free, the proper parish priest is present, suitable witnesses are present, and consent is clearly expressed: therefore, it is concluded that these parties validly, although illicitly, entered into marriage. This is indeed correct. However, based on the legally and formally completed proceedings of the year 1880, it appears that a different conclusion must be reached; for from the sworn depositions of the contracting parties, and the unanimous testimony of witnesses of each kind, it is morally certain that true and sincere consent, as required by the Church in the Sacraments, was lacking in them; that is, the sanctity of this sacrament, which the great Apostle calls "the whole matter," was absent. It is clear that the entire affair was treated as a game, and carried out jestingly and with laughter, as has been shown above, from which it is permissible to infer nullity. It cannot be objected that Angelus and Anna performed the external rite, for which, according to some, internal consent is not required; but the Holy Catholic Church rightly requires in the ministers of marriage, according to St. Thomas, the intention that what is performed externally should be holy and religious, and the very institution of the Sacrament indicates this. In the Council of Trent, it was debated whether those who act with a serious intention, but without internal consent, validly perform the Sacraments. The opinion, attributed to Ambrose of Cattolica, O.P., which affirmed this, was not disapproved by the Fathers, but has had, and still has, the support of the most serious theologians to this day, provided that the external rite has been performed seriously, and not mockingly. It is one thing to perform the rite seriously, and according to the mind of the Church, with all jesting removed, externally, which the aforementioned doctors acknowledge as valid, setting aside internal consent; and it is another thing to usurp the sacred rite through jest and laughter, as is commonly done in theaters. Such an error, most injurious to the faith, was condemned by Leo X in the case of Luther, and by the Council of Trent, Session XXV, chapter 9, which excommunicated with an anathema those Lutherans and Calvinists who held such perverse views. Whether the judgment should be considered

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valid, which...

[*Latin ed. p. 538*]

538 Did the Asculan judge condemn someone through a jest, or a mockery? In like manner, should it be said that a marriage is valid when the proceedings show that it was a game? All agree that external rites are not always sufficient for validity, unless they are performed seriously and with true intention; otherwise, we have found that this has happened in the present case. Therefore, the character of the contracting parties, the lack of true consent, or intention, the agreement of witnesses, and all the other things mentioned above, invalidate what the Asculan theologian presented as evidence of validity: he considered the nature of the marriage to be in effect, not as a jest, but seriously performed. Now, however, it is clear from the statements that both parties did not intend to celebrate the sacrament, but rather to play and mockingly simulate the matrimonial act. Given these circumstances, at least in my judgment, let us hear the Angelic Doctor, teaching in his usual manner in III. P. Q. 64. 10: "Intention, in the sacraments, can be perverted in two ways: in one way, with respect to the sacrament itself, for example, when someone does not intend to confer the sacrament, but to do something mockingly, and such perversion destroys the validity of the sacrament, especially when the intention is manifested externally, etc." These words apply to our subject. But since, in the case of a marriage that is declared null and never consummated, as it appears from the proceedings, with all affirming it, as Coscius and the Canonists prudently point out, conclusive proofs are required, therefore, if anyone doubts this validity, I believe it is advisable to consult the Holy Father, so that he may pronounce judgment with his supreme authority. Having consulted the above, and adhering to the proceedings, I have refrained from the question debated among theologians regarding the minister of marriage, embracing the opinion that is now commonly held, and according to St. Alphonsus, clearly taught by St. Thomas, that the ministers of marriage are not the priests, but the contracting parties themselves, reciprocally, through their words. The words in which consent is expressed are the form of this sacrament, and not the blessing of the priest, which is a sacramental act, as stated by 4 Seilt, dist. 26, q. 2, and again dist. 28, 4. This opinion...

[*Latin ed. p. 539*]

Many excellent theologians, such as Scotus, Gonet, Gotti, Billuart, and others, embrace and defend this view. However, others, including M. Cano, Toletus, Sylvius, Nat. Alex., Drouven, Tourneley, Concina, and several more, maintain that the Minister is a Priest, and his words constitute the form. Since the Church has not defined this matter, Pope Benedict XIV considers the opinion of Cano, which is shared by so many Doctors, to

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be highly probable, and he declares that it is permissible for everyone to embrace it without any note of error. Concerning Syn. C. 28. 3. Therefore, if, according to these opinions, the priest is the Minister of Matrimony, and his words are the form of the Sacrament, it would undoubtedly be logically demonstrated that the marriage, of which we are speaking, is null, since it is certain that the parish priest said nothing, and that a Sacrament without a form is null and requires no proof. THE OPINION OF A CANONIST. When asked to express his opinion, this canonist stated that he would humbly reveal his view, which he had been able to form from the proceedings. From these proceedings, it appears to him that there was no marriage in this case, or at least it is doubtful; certainly, it was not consummated, but only ratified. To explain this opinion more easily, he will reduce it to three main points, which are derived from the proceedings concerning the marriage in this case: 1. Is the marriage in this case valid? 2. If it is valid, is it only ratified, or is it also consummated? 3. If it is only ratified, are there reasons to be considered by the Most Holy See for a dispensation? Regarding the first point, it appears that the marriage in this case lacks validity due to the absence of consent and the absence of the legal presence of witnesses. The absence of consent is deduced from the confession of the parties, because they affirmed, by oath, that they had no intention of entering into marriage before they asked the parish priest, nor before him and afterwards; but that they did so only in jest. From these confessions, it is clear that the entire question of the validity of the marriage in this case is reduced to this: whether the absence of consent can be proven by the testimony of both spouses. Sánchez, in book 1, dispute 45, states: "Because..."

[*Latin ed. p. 540*]

540. External impediments can be proven by another means when they exist; however, dissent, when it lies hidden in the heart, cannot be proven by any other means except through the confession of the spouses; although other conjectures may be employed. - The reason and the authority of such a learned writer lead to the conclusion that the marriage is null in the case where the lack of consent has been declared through the confession of the parties. And this is all the more so because there are no means lacking by which the lack of consent can be proven. These are confirmed by the very parish priest and by witnesses. Indeed, the fact that Angelus and Anne, without intending to enter into marriage, merely presented themselves to the parish priest in jest, is deduced from the opinion received by the parish priest himself regarding this marriage. The same conjecture regarding the will of Angelus and Anne – that they entered into marriage in jest and not in truth – is confirmed by the witnesses. It is truly helpful to note this unanimous testimony of the witnesses, which, apart from its legal force in proving, also contains what proceeds from reputation; for the witnesses refer to

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the public opinion of the entire region. And this opinion of the entire region is not a mere empty popular clamor, but possesses the true qualities of reputation; for it originates from honest and trustworthy persons, namely, from the witnesses themselves; it arises from a probable cause, stemming from the perverse character of Bordoni and his habit of jesting with all women about marriage, even to the point of entering into marriage with them; it is also long-standing, uniform, and prior to the commencement of the legal proceedings, as is required by law. Reiffenstuel, lib. 2 Decret, tit. 20 § 12, De Fama. Therefore, although reputation alone does not constitute full proof, it is sufficient to prove if other presumptions assist, which are not lacking in this case. Mascardo, de probat, conclus. 757 num. 1 et 22. Hence, in addition to the other proofs presented, there is that which is derived from true reputation. With all these proofs, received according to established procedure, it seems to me, unless I am mistaken, that it must be legally concluded that consent was lacking in this case. And the nullity of this marriage is even more evident from the fact that...

[*Latin ed. p. 541*]

ASCULANA 54: It is asserted that the marriage was a sham, not through deceit, but through jest. A sham marriage is null, even in the case where the deception originates from only one of the contracting parties, and in the case where a marriage is considered a sham due to jest, this occurs when both contracting parties are involved. Therefore, I would say, with Pyrhing, book 4, section 1, paragraph 95: "He who contracts under duress contracts invalidly... But a simulated consent is not true, and therefore a simulated marriage is not valid... Rather, one must consider what is actually done, rather than what is supposedly intended." It cannot be argued against this that deception can never be admitted in a case, because we express our actions and consent no less than with words; and it is more important to do something than to deny it with words. L. Si autem § de aediL Edict. And from Chapter Per tuas de Praeb. "It is highly improper, according to legitimate laws, for what each person has clearly protested with their own voice to invalidate their own testimony." These testimonies from both legal systems cannot invalidate the nullity of the marriage in this case, because the texts speak of deception operating through deceit and not through jest; nor do they refer to the case in which both contracting parties are involved. Therefore, although jest should be condemned, it is nonetheless wrong to deduce and affirm the truth of consent in this case, nor is a marriage feigned through jest by both contracting parties to be considered true and valid. This nullity, or at least the doubt regarding the validity of the marriage in this case, is further strengthened by the lack of witnesses, according to the intention of the Council of Trent, Session 24, chapter 1, concerning the true nature of marriage. In truth, in the case of this marriage, there were present witnesses, the women Angela Amadio

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and Aloysia Agostini, who is the parish priest's sister. This woman affirms what the other witness denies, namely, Angela Amadio, who, immediately after the supposed celebration of the marriage, when questioned by the priest as to whether she had understood what had been said and done by the bride and groom, replied that she had understood nothing. This is what Angela said in the year 1868; however, in the year 1874, she was examined judicially and stated that she had only understood what Bordoni had said, and that she had not understood, nor had she seen, any sign of consent from Anne Campitelli.

[*Latin ed. p. 542*]

§42 Did the witness speak the truth? If he spoke the truth to the parish priest, there is no marriage lacking the moral and legal presence of witnesses; for the Council of Trent requires the presence of at least two witnesses, acting according to human custom, who, together with the parish priest, observe what is done by the contracting parties. But in this case, one of the two witnesses understood nothing; therefore, the marriage is null. Felin, in prooem, decret., n. 21. Sánchez, Disput. XIV, per tot. "If, however, the witness spoke the truth in a judicial deposition, what was said, as a judicial statement, should be given precedence"; Reiffenstuel, lib. 2, tit. 20, De test., § 10; again, in this case, the marriage is null due to the lack of consent on the part of Anne Campitelli. Regarding the second point, the Consultant stated that, from the entire process, which was properly completed, it is clear that the marriage in this case was only valid and not consummated. I understand that the parties affirmed this under oath, a requirement made by the defender of the bond, and this is derived from the testimonies of the witnesses. And first, from the testimony of the parish priest. For he, in answering the questions proposed by the judge, affirmed what all the witnesses unanimously confirmed under oath. The mother of Anne declared the same under oath. Therefore, from what all the witnesses, acting in concert, agree upon, namely, that there was no prior or subsequent marriage between Anne and Angel, and that they both are of good reputation, it is clear that the marriage in this case was only valid and not consummated, according to the opinion of DD. Coscius, De separatione, lib. 6, cap. 3; Gonzalez, De conventione, com., n. 7; Ursaya, Discep. Eccl., tom. 3, disp. 21. Unless my opinion deceives me, the Consultant continued, it seems that an affirmative answer should be given to the third point, since not one, but many reasonable reasons urge you, Most Reverend Fathers, to obtain from the Reverend Prelate a dispensation regarding the marriage in this case, which the petitioner urgently requests. From Conrad, Praxis Dispensat. Apost., lib. VIII, c. 7, n. 27: "Causes which are admitted according

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to established practice for dispensation..."

[*Latin ed. p. 543*]

In the province of Ascula, the grounds for dispensing with marriage are reduced to four, of which... The second is the grave fear of a great future scandal, because this falls into a great common detriment... due to the fear of fornication. - The fourth is when one of the spouses asserts that he did not have the intention of contracting marriage. This opinion is followed by Sánchez, title 2, section 16, and with him, many canonists. Both of these grounds for dispensing with marriage are present in this case. The first is the fear of a great scandal, due to the danger of incontinence on the part of Anne, who is averse to Angel, since he is a laughingstock among the people, and is already advanced in years. And since Anne desires to be married, it is to be greatly feared that, being prohibited from a legitimate marriage, she may enter into a legal concubinage, as she has threatened, even though she has abstained thus far, sustained by the hope of a dispensation, as the Bishop of Ascula reports in his letters. This action could be driven by her age, for she is seven years past thirty; by necessity, because she is very poor; and finally, because she finds an opportunity for marriage now which she will scarcely be able to find in the future. Therefore, if the spiritual benefit of the petitioner is to be considered in granting a dispensation, as Perez teaches, *De Matrim.*, section 20, paragraphs 7, number 11, then the greatest spiritual benefit of the woman demands the supreme ecclesiastical authority's office of granting a dispensation. The same must be said of the spiritual danger of Bordoni, who, unwilling to take a wife, would not fulfill the duty of marriage, from which would arise quarrels, scandals, and the danger of incontinence, all of which are sufficient grounds for dispensing with a marriage that is valid but not consummated; Suarez, *De Matrim.*, section 16, paragraph 3; *De Separ.*, book 1, chapter 16. The second ground for dispensing with marriage is also present in this case. From the sworn judicial testimony of the parties, and from the testimony of all the witnesses, it is certainly and clearly evident that not only did one of the parties lack the intention of truly and duly contracting marriage, but that both lacked such intention, but only pretended through jest.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE OFFICE.

[*Latin ed. p. 544*]

544. In Angela, a marriage was contracted in the year 1865 before the parish priest and witnesses by Angelus Bordoni, approximately 40 years of age, and Anna Campitelli, who was approximately over twenty years old. They claim that they did not consent to the marriage, but rather that they merely spoke words, and that they have always abstained from conjugal relations. The most learned consultants, not having discovered the

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nullity of the marriage themselves, resort to the extraordinary remedy of a dispensation. However, after careful consideration, neither the ordinary remedy of justice nor the extraordinary remedy of grace seems available to the parties. Indeed, with regard to the former, the parties themselves, while attempting to prove the lack of consent in the marriage, ensnare themselves in so many snares that they can never escape. I will not recount all of them, but I will mention two of the most important. First, the plaintiff, in her written petition, which forms the basis and foundation of the present judgment, states: "That Angelus Bordoni said, laughing, 'This is my wife,' to which the woman gave no response, due to excessive laughter." However, the same plaintiff, in her oral testimony, affirms: "That Angelus Bordoni said to the priest, 'This is my wife,' and that she responded, 'And you are my husband.'" Furthermore, the man, Angelus Bordoni, does not show himself to be concerned with the truth, since he reports to the priest that, when urged by him to fulfill his conjugal duties, he responded: "That he utterly abhorred his wife." On the other hand, the priest testifies: "That Bordoni, laughing, left my house together with the young woman Campitelli, saying that they had performed the marriage." But they also claim that the marriage is invalid because it is not certain that Angela Corradetti, one of the witnesses called to the marriage, heard the words of the marriage contract spoken by Anna Campitelli. For the priest testifies that Angela, on one occasion, said: "I understood what Bordoni said, but not what the young woman responded"; and on another occasion, she said: "I do not remember." Such testimony is to be regarded with suspicion. For in legal proceedings, credence is given to witnesses, not to testimonies. However, Angela, although she heard...

[*Latin ed. p. 545*]

The case of ASCULANA 545, presented by the priest Diamanti for the information of the court, did not, however, come to a judicial examination. Furthermore, since it is certain that the parish priest and another witness, Livia Agostini, heard the matrimonial words from the mouth of Anne Campitelli, it is not sufficient to invalidate the marriage that Angela Corradetti asserts, nor do I remember it. Especially since, as Barbos states, in vot. decisiv. 51, n. 33: "In the presence of doubt, in order that the nullity be refuted and that the act be sustained and may be more valid than it perishes, the judge must judge; and also, because that interpretation is always to be admitted which does not subvert the act, since the act must be presumed to be valid." But regarding the alleged lack of consummation of the marriage, the discussion is entirely futile. Indeed, Anne, when questioned by the judge about what custom existed after the marriage with Bordoni, replied that no custom existed, except for a simple greeting; Aloisia, Anne's sister, testified that they behaved the same as good neighbors. Given these circumstances, the matter is brought to a dilemma: either they were united in

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conjugal affection, since they remained together for so long without any intermediaries, and any aversion of the mind ceased, or it must be considered that they contracted the marriage in jest. If the former is granted, then the matter concerns a dispensation; if the latter, then recourse must be had not to an extraordinary remedy of grace, but to an ordinary remedy of justice. To this, however, stands in the way the lack of proof, as has been shown above. With these points noted, the following questions must be clarified: I. Does the nullity of the marriage exist in this case? And, II. Should the matter be brought before the Most Holy Synod regarding a dispensation from a valid but unconsummated marriage in this case?

RESOLUTION. The Holy Congregation, having considered the matter, on December 14th, Volume XXII, page 261, number 35.

[*Latin ed. p. 546*]

546 ASCOLANA, brief of 1889, decided that it did not appear that a marriage existed. From which it is gathered: I. That a demonstrative certainty cannot be had in human actions, upon which a judgment is founded; and therefore, a probable certainty is sufficient. II. That it is more likely that something said or reported by many contains the truth, than that something said or reported by only one person. III. That in this case, all the parties and witnesses swore that no true marriage had been entered into; since whatever was done before the priest and witnesses was rather chosen in jest, than seriously, without the intention of contracting marriage. IV. If the will and knowledge of consent are lacking, nothing is valid; because if nothing is willed, then nothing is done, and consent, properly speaking, is only of those things which are done for the end. V. The intention in the sacraments can be perverted to the extent that the sacrament is made derisively, and the sacrament is not understood to be being performed; this perversion destroys the truth of the sacrament. WRATISLAVIEN. DOUBTFUL, December 14, 1884. Session 24, chapter 1, on reforms. "The Bishop of Wratislaviensis sent a humble letter to the Most Reverend Prince on January 24, 1889, of the following tenor: 'Benedict XIV, in the Constitution which begins with "Dei miseratione," decreed that in all cases which are disputed concerning the validity or nullity of marriage, the defender of the marriage should be heard, should appeal, and should be judged for its value. These cases are included in the Instruction for Austrian ecclesiastical courts, approved by many outstanding theologians and jurists of the Romans, and recommended by the aforementioned COMPENDIUM FACTI.'"

[*Latin ed. p. 547*]

BRESLAU. In the year 1855, a notification from Vienna concerned the question of the death of a spouse, when one spouse seeks permission for a second marriage from the episcopal court. However, the Holy

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Congregation of the Council, in Milan, on February 27, 1734, delegated such judgments to the discretion of the Bishop. Ferraris, in his *Bibliotheca*, under the entry "Polygamy," clearly distinguishes the process concerning the nullity of marriage from the judgment regarding the death of a spouse, through canonical proofs, implicitly following several Instructions of the Holy Office, without a defender of the marriage being present.

"Therefore, the following question is humbly proposed:

1. Whether the proof of the spouse's freedom should be considered among the causes of nullity of marriage, as stipulated by the merciful Constitution.

2. And, negatively, whether the defender of the marriage is obligated to appear in such a judicial matter, to swear, to appeal, as indicated by the venerable Benedictine Constitution."

The Austrian Instruction to which the Bishop of Breslau refers contains the following:

"§ 246. Since the bond of marriage is holy and inviolable, no one can be admitted to a second marriage unless he presents proofs of the spouse's death, which completely exclude any reasonable doubt. Those things that tend to establish the moral certainty of death must be treated with the utmost caution, but should not be absolutely rejected. It is possible that, from the circumstances, fully proven, a moral certainty arises that the spouse is no longer alive, even if there are no documents or testimonies confirming that the spouse's death has already occurred. If a spouse presents such evidence in the absence of the other spouse, he should be advised to first consult a civil magistrate, to whom greater means are available for investigating the facts, and from whom a declaration of death can be obtained for civil purposes."

"§ 247. As soon as the provincial court has completed its investigation and communicated its judgment, the matrimonial tribunal, with the defender of the marriage present, will judge whether the spouse, whose fate is unknown, is considered dead, with the effect that the other party may proceed to a new marriage."

[*Latin ed. p. 548*]

548. In WRATISLAVIEN, it may be permissible to contract marriage, although the spouse may be considered dead. The decision must always be subject to the judgment of the Bishop. "Synopsis Disputationum." If we consider the reason for which the office of defensor matrimonii was instituted by Benedict XIV, the Austrian Instruction appears most prudent, and it seems that it should rather be extended than restricted. Indeed, the Pope speaks thus: "To Us... have been shown examples of certain men, who, after having had a first, second, and third wife, whom they had taken, because of the excessive haste of the judges in declaring marriages null, still went on

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to contract marriages with a fourth, while the first wives were still living, etc." The cause of this wickedness was often either the negligence of the judges, or, especially, the collusion of the spouses, by which it happened that no one defended the validity of the marriage. Wishing to remedy this, the Pope ordered that a defensor matrimonii be appointed, whose office would be to "appear whenever it should happen that matrimonial causes concerning the validity or nullity thereof are discussed before a legitimate judge..., to be summoned in any judicial act, to be present at the examination of witnesses, to defend the validity of the marriage with his voice and in writing, and to do all that he shall consider necessary to support the marriage." From the words of the Pope, it is clear that the principal reason why he considered it necessary to issue such a grave decree was to completely eliminate the danger of bigamy. THE DEFENSOR SEEMS TO BE OBLIGED TO BE PRESENT. However, in the case of the death of a spouse, if one spouse seeks to obtain permission for a second marriage, there is a very close and direct danger of bigamy, just as in other cases of nullity or dispensation of marriage. Indeed, in this case, a more serious and more noticeable scandal could arise, if the absent spouse, who was believed to be dead, should ever return to his wife. But can it be objected that, if the case involves a notorious fact, it can easily be proven that the spouse is dead, and therefore there is no need for all the formalities of law?

[*Latin ed. p. 549*]

WRATISLAVIEN. 549. Let recourse be made; for Gonzalez, in L. 2, vol. 18, chap. 14, no. 4, states that even that which is notorious does not exempt from judicial investigation; – there – "Above all, the judge must ensure that he knows what is notorious; not because it is necessary to prove that which is notorious, but because it is necessary to prove that something has been done in a notorious manner." And it can happen that what is notorious in fact is not so to the judge, as the Glossa states in chap. 21 concerning the sons of priests, v. "requiris," and in chap. "Cum olim" 2, concerning the words "signum factum est."

THE DEFENSOR SEEMS NOT TO BE REQUIRED. However, on the other hand, since we are dealing with the interpretation of the law, it is necessary above all to consider the intent and the words of the law. It is manifest that there is no room for interpretation where the words of the law are clear. Indeed, all the texts of the law that require a defensor of marriage speak, in express terms, of causes "which concern the validity or nullity of marriages," as the Constitution Benedictina § 6 states, and not of its existence. Furthermore, the Instruction of the Sacred Congregation of the Council, dated August 22, 1840, requires the presence of a defensor "whenever either of the spouses presents a written petition concerning the nullity of the marriage." And if the Instruction of the Sacred Office for Oriental Affairs, dated June 20, 1883, requires a tribunal with a

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defensor to judge concerning an impediment to marriage, this is only the case when such an impediment "is brought forward to impugn a subsequent marriage" (1). Moreover, in all the texts that speak of the proof of freedom of status, no mention is made of a defensor. For, before the Constitution Benedictina, the only rule for such a matter was the Instruction of the Sacred Office, dated August 21, 1670; (2) in which, however, it is a question of proving freedom of status to be done in the court of the Bishop; but without the pomp of a trial. Hence, the Doctors interpreting Cap. "Dominus" 24 concerning marriages, and chap. "In praesentia" 49 concerning betrothals, teach that such proof pertains to (1) This instruction is found in Vol. XVIII, 344. (2) This instruction was related in Vol. VI, 442; and on page 436 of the same volume, another Instruction of the Holy Inquisition is found, the most recent one, concerning the proof of the death of one of the spouses.

[*Latin ed. p. 550*]

The ecclesiastical judge, with his prudent judgment, must carefully consider all the circumstances of place, time, and persons. Thus, Ferraris explicitly states in *Polyandria*, n. 26, and this is corroborated by Sánchez, *L. 2, d. 46, n. 7*, Gonzalez, *in cap. In praesentis, n. 7*, and Reiffenstuel, *lib. 2, tit. 21*. Indeed, the Sacred Congregation, in Brugnato, on May 24, 1642, declared that the freedom of the state must be proven in the Bishop's Chancery; and in Milan, on June 27, 1665, it added that the freedom of the state must be demonstrated before the Ordinary, following the prescribed form of the Instruction of the Holy Office. Similarly, in the case of a marriage in Pavia, on February 27, 1734, to which, although under a different title, namely Milan, the Bishop of Breslau himself referred in the petition. A certain Teresia Concetta, a citizen of Milan residing in Pavia, wished to enter into marriage with a second man, alleging that her former husband was deceased, based on letters from a certain military chaplain. However, on December 12, 1733, the matter was presented to the Sacred Congregation with the question: "Can Teresia Concetta be permitted to contract a second marriage?" The response was: "Based on what has been presented thus far, the answer is negative, and furthermore." But the petitioner persisted, and presented the testimony of a single man who asserted that the woman's former husband was deceased, and that he had personally witnessed his death. However, it was noted in the case file that the death of a spouse could be considered morally certain if conjectures rendering the death probable were supported by the testimony of a person worthy of belief. After considering these matters, the Sacred Congregation responded to the question of whether to adhere to or depart from the previous decision: "At the discretion of the Bishop." From this, it appears that such a question pertains more to the noble office of the judge than to a contentious forum. Nor has this manner of proceeding been altered since

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the time of Pope Benedict. Testimony on this matter appears to be found in the response of the Supreme Congregation of the Holy Office, dated February 24, 1847, regarding doubts concerning the Instruction of 1670, and it is beneficial to reproduce this response in its entirety. Doubt VII: "In the penultimate paragraph of the aforementioned decree, it is prescribed: And in such examinations (regarding proof of the death of a spouse), one must be present... outside the city..."

[*Latin ed. p. 551*]

"WRATISLAVIEN. 5S1, either a Vicar of the Bishop, or some other distinguished and suitable person specifically appointed by the Bishop. » By the words: - a distinguished and suitable person, - the Vicars forane with their notaries may be understood; although these do not have the power to grant [annulments], which is reserved only for the episcopal notary? » To this, the response was: "Affirmatively; however, the Vicars forane must transmit the proceedings to the episcopal curia, which is responsible for ascertaining the freedom of the party. » Furthermore, if such a matter pertains to those cases which fall under the Benedictine Constitution, then this person must certainly be suitable, besides the judge delegated, the defender of the marriage bond. Having considered these matters, the arrangement in the Austrian Instruction may seem too strict. Unless, however, the tenor of the same instruction is examined more closely and its words are understood more precisely, it appears that everything can be brought into proper balance. Indeed, the case contemplated in the Instruction is not one in which it is established by evident proofs of the death of the spouse; for in the aforementioned instruction, it is assumed that there are lacking "documents or testimonies confirming that the death has already occurred," and that there is no other means of ascertaining the truth than presumptions and consideration of circumstances; and in this case, and not in another distinct from this, a matrimonial tribunal is to be established, constituted according to the manner of defending the marriage. Therefore, the intention of the aforementioned instruction appears to be that the defender of the marriage should assist the judge, not in all cases in which the death of a spouse is to be proven, but only in the more difficult ones, when indeed the Ordinary cannot readily, easily, and of his own accord, judge the freedom of a spouse due to the death of the other party. This distinction seems to have been introduced and asserted by the Holy Congregation itself in more than one place; but especially in the matrimonial doubt of Strigonien, on August 28, 1858, in which, when three such doubts were proposed: "I. Whether the recognition of rights produced during the course of the litigation, ordered by the judge, is an act of justice in this case. II. Whether it is appropriate for the judge to order said recognition in matrimonial cases in this case. III.

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Whether in the reco-"

[*Latin ed. p. 552*]

552. WRATISLAVIEN. In matters concerning marriage, the "Defensor Matrimonii" (Defender of the Marriage) must be cited in the case. > The Sacred Congregation responds: To the first question, affirmatively. To the second question, affirmatively, if there is a just reason for doubt, according to the judgment and prudence of the judge. To the third question, affirmatively. Therefore, if, during the course of a legal dispute concerning the validity of a marriage, the judge can, according to his own judgment, refrain from ordering the examination of documents, and, without a defender, can, according to his own judgment and prudence, accept only those documents which he considers authentic, it seems that the Bishop, to whom documents concerning the death of a spouse are presented, can, whenever there is no reason to doubt their validity, without delay, and without a properly constituted tribunal or the citation of a defender, declare the person to be free in the state. However, if there is a prudent reason for doubt, for example, if the spouse is said to have died in a remote region, and there are no conclusive proofs, then, certainly, the wise judge will not trust his own judgment, but will resort to the precautions and formalities prescribed by the Church, and thus he will be considered to have acted in the best interests of both his own conscience and the discovery of the truth. With this distinction applied, no discrepancy will appear between the provisions of the Austrian Instruction and the common law. Indeed, it may be said that it is a dangerous thing to derogate from the sanction of the Benedictine law, even in the most evident cases. For it is necessary to distinguish between questions concerning the nullity of marriages and questions concerning their existence. For if one of the spouses has died, and likewise if two concubines are living, a doubt may be raised concerning the existence of the sacrament, but not concerning the nullity or validity. Moreover, it seems that in cases concerning the nullity of marriage, even in evident cases, the proper form of process, according to the Benedictine law, must always be observed; indeed, in Sonora, the Visitation of the Most Holy Lords [Cardinals] declared on August 26, 1848, that the Bishop was denied the power to proceed in these cases by a shorter and more summary method. However, in cases concerning the existence of marriage, at least in evident cases, this is not the case, since in one case of marriage in Treves, on January 29, 1857, it was expressly declared that in the case of marriages "which are neither celebrated before the Church, nor in any other ecclesiastical forum..."

[*Latin ed. p. 553*]

WRATISLA.YIEN. 553, concerning cases where the validity of marriages had been questioned, the Benedictine constitution, with regard to the form

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of the process, did not insist on strict adherence. And there is a reason for this difference in discipline; for in a question of fact, as is the case with the *servata forma Tridentina* or with the death of a spouse, it is easily possible to verify the evidence, eliminating all doubt to the contrary; whereas, in a controversy concerning the validity or nullity of a marriage, the question of law is always involved, along with many and intricate circumstances, which require numerous and serious precautions to resolve. However, even in a simple question of fact, such as the death of a spouse or the *servata Tridentina forma*, evidence and notoriety may be lacking, and recourse must be had to indications, which are difficult to evaluate. And then, all the precautions of the matrimonial process should be observed, as the very reason of elementary prudence suggests. With these considerations in mind, the following questions were raised:

I. Whether the proof of the status of being free in the case of uncertain death of a spouse should be presented among the causes of marriage, which are required by the Benedictine Constitution, with regard to the form of the process in this case. And the answer is negative.

II. Whether, in carrying out such a business, the defender of the bond still has to swear, and appeal to the form of the aforementioned constitution in this case.

RESOLUTION. After discussion by the Sacred Congregation on December 14, 1889, it was decided to respond:

To I. Negatively.

To II. For the Austrian jurisdiction, the Instruction in force in the ecclesiastical forum there can be followed; for the Prussian jurisdiction, the Instructions of the Holy Office pertaining to the matter should be followed.

FROM WHICH IT IS UNDERSTOOD:

I. The defender of the bond is required when the matter concerns causes that are brought regarding the validity, or nullity, of marriages; or when someone is a spouse.

[*Latin ed. p. 554*]

554. The Archbishop of Vienna raises the question concerning the nullity of marriages; however, not when the matter pertains to their very existence. II. The proof of the status of liberty must be made without undue clamor by an ecclesiastical judge, with prudent judgment, considering all the circumstances of place, time, and persons. INDULT. On December 14, 1889. Through summary petitions. The Bishop of Orleans reports that he has diligently attended to the examination of the legacies and pious foundations of his churches, which are in an unfair state, both due to political changes and to various reductions in public revenues. In particular, he took care to prepare an accurate account of all the legacies and burdens of the Church

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of Saint Paternius, which, more than others, is said to be burdened with legacies and difficulties; and he submitted this account, somewhat lengthy and detailed, to the Sacred Congregation for the Affairs of the Church, in order that the Holy See might not only consider the matters and needs presented therein, but also, from this example, learn about the difficulties in which other diocesan churches are laboring, and that the Bishop might be granted the power to provide for the cases in which he must appeal to the Holy See. Furthermore, the foundations of the Church of Saint Paternius are divided into multiple classes, which are called series, and each of these contains numerous and varied legacies. In the first series, the foundations made before the year 1806 are listed: of these, no revenue remains due to the robberies of the French Revolution; nevertheless, the parish priests, who after the Revolution took care of the affairs of the parish, considered it just and equitable to assume something from the ancient burdens, and to satisfy the ordinary expenses from the revenues of the fabric. However, what the foundations were originally...

COMPENDIUM FACTI.

[*Latin ed. p. 555*]

In Usküb, according to the records, there is no mention of the year 555. However, it is noted that after the revolution, it has been customary to celebrate 110 Masses from the endowment of a single book, along with a certain sacred function, at an expense of 70 books. It is proposed that, in the future, only 76 Masses be applied, along with an alms of 1.50 livres for each, and that the expenses for the sacred function be reduced to 64 books. The second series contains 33 foundations established before the year 1854. Furthermore, due to the reduction in public revenue, which they call the conversion from 5 to 3 OpD (presumably a local currency or accounting unit), the income of these legates has been greatly diminished. Of these, thirty foundations, to which 488 Masses should be applied, along with alms of 1 livre from a single book for each, and certain sacred functions celebrated in honor of the Lord, the Blessed Virgin, or the Saints, at a total expense of 704 books, receive only a public revenue of 345.35 livres.

Of the remaining three foundations, the legate Normand receives only an income of 100 livres, and is burdened with 52 Masses, according to the diocesan tax for celebrating them, as expressly prescribed by the testator, and with the obligation of paying 40 livres to the parish priest for the poor. The legate Iourdan has a revenue of 117 livres and prescribes 104 Masses. The legate Colas receives no monetary income, for the testator donated a portion of the parish house and requested that four Masses be celebrated. Regarding these, the parish priest, with the approval of the Ordinary, requests that the sacred functions be performed with less solemnity, and thus

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save somewhat on expenses in this regard; what remains after these are celebrated can then be distributed for the celebration of Masses, according to a tax of 1.50 livres, which appears to be a diocesan rate. Thus, there would be 40 Masses for the legate Normand, 78 for the legate Iourdan, one for the legate Colas, and 127 for the other thirty smaller legates.

The third series contains the donation of De la Taille, from which 460 Masses are to be celebrated, which previously yielded an income of 711 livres. Now, however, the income has decreased to 591 livres, and, with the increase in the alms for the Masses to 1.50 livres, it yields only 392 Masses.

[*Latin ed. p. 556*]

556. The case of AURELIANEN, a legatee in the third series, provides sufficient income to fulfill the obligations as stipulated by the testator, and therefore, there is no question regarding him. In the fifth series, which includes legates from the year 1864 to 1888, two questions are raised: 1. Regarding the legatee Huet, it is asked whether the 902 Masses, which have been delayed until now, can be fulfilled with an alms of one book, even though the stipulated payment in the book, along with half and a ticket, amounts to 120 francs per year. 2. Regarding the legatee de la Bergère, it is asked whether the census, which is currently free and without title, should be subject to a legal obligation. Finally, in the last series, several legates are mentioned that have ceased to exist due to the institution of charity; 86 Masses should have been celebrated; but the parish priest states that there is no income available to fulfill these, and therefore, it is asked that the obligation be reduced to 23 Masses, with a payment of 1.50 livres for each.

Synopsis of the Discussion. A few observations have been made regarding these matters; and first, although there are those learned doctors who maintain, with arguments that are not easily dismissed, that churches should always be held liable for the obligations undertaken by legates, even if the substance of the legates has been diminished or even completely lost, either by reason of a contract or by reason of the acceptance of the inheritance; nevertheless, the Sacred Congregation [Consilium] has always, with a more equitable judgment and according to civil law, as shown in the *Liber Extra*, in the sections concerning commodities, held that churches and benefices should be relieved from obligations, either in whole or in part, whenever the income has been consumed or greatly diminished. It is sufficient to cite before the Sacred Congregation the case of Sjoolet, of June 17, 1775, concerning this matter. Therefore, with regard to legates prior to the year 1806, whose fate has been completely lost, whatever has been or may be demanded of them seems to be based more on liberality than on a debt of justice. Even more so, since the ancient status of the churches of Galliae, with their respective rights and obligations, was

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suppressed by the Concordat.

[*Latin ed. p. 557*]

AURELIANEN. 557 Concerning other, more recent matters, about which we have only briefly lamented the decline, it is certainly fitting, as previously stated, that the burdens also be reduced proportionally. However, whether a further reduction should also be made, or whether the alms for the Masses should be increased, is a matter of debate. On the one hand, it seems necessary to observe the duty owed to the founders, so that the number of assigned Masses should be filled as much as possible, and therefore, it should be avoided to increase the established stipends, especially since the stipend of a single Mass should not be considered insignificant. But on the other hand, it is certain that when the number of Masses celebrated is excessive and their alms are meager, the Church can reduce the number of Masses and increase the stipends, as the Council of Trent taught in chapter 4 of session 25, cited by S. C. C. and very frequently, as can be seen in Tolentinaten, Comment. vol. 24, March 1888, Engolismen, Facuì, coadj. 18 August 1888, and Pope Benedict XIV himself confirms in synod. I. 13, c. ult., n. 28. It may be objected that the stipend of a single Mass is a fitting amount; for the absolute value of money is not the measure, but it must be measured according to the circumstances of the place and time, and indeed, for the matter at hand, even according to the needs of the clergy and the churches; therefore, in general, the sufficiency of the stipend should be determined by the diocesan tax of each place; which, since it is usually 1.50, a smaller alms may be considered insufficient. Furthermore, since those who establish Mass foundations usually assign alms that are greater than the diocesan tax, they never assign smaller ones; therefore, if, due to the necessities of the times, this tax must be increased, it cannot be considered unreasonable for the founders to permit this increase. Concerning the celebration of functions with less solemnity, so that more expenses are not incurred than the circumstances allow, there is no room for debate. But those matters that concern the distribution of burdens within the church and their satisfaction, as well as the change of manual schedules with other schedules legally inscribed, seem more a matter of prudence than of justice.

[*Latin ed. p. 558*]

558 CONCERNING AURELIAN. There is only one matter concerning the legate Huet in the fifth series of foundations in which some obscurity is found. If the revenues are sufficient to celebrate Masses with alms, amounting to 1,500 livres, it is not understood why the care of the alms of a single book is requested; if, however, the revenues are insufficient, it is not apparent why a special inquiry is not raised regarding this matter; finally, if the revenues have been present up to now, and have reached 1,200 livres annually, it is not explained how the legate's satisfaction has been omitted

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for so many years. In these particulars, having considered the obligations and legacies to the church of St. Paternius, the general power which the Bishop requests, so that he may also be able to provide for other churches in his diocese, and so that he may not have to appeal to the Holy See in each individual case, is recalled, in accordance with what Benedict XIV states in *De Syn.* I, c. n. 20. Indeed, the Pope speaks thus: "Since the reduction of Masses is reserved to the Apostolic See, it can scarcely be said how much confusion this one matter would cause for the Congregation of Councils, to which knowledge of such reductions was entrusted; and therefore, in order to alleviate some part of this burden, it began to devise a plan by which it would often delegate to Bishops the power to reduce Masses in their Dioceses, but at the same time, it would provide them with instructions, to which they would be obliged to conform in carrying out the reductions." This plan was also recently adopted by the Sacred Congregation of the Council in the case of Engolismen, which is very similar to our own, on August 18, 1888. With these premises, the question was raised as to how the petitions should be granted. RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, decided on December 14, 1889, to respond: "By the discretion and conscience of the Bishop, for this occasion, after having conferred with the superiors, and in accordance with what is to be done to him by letter."

[*Latin ed. p. 559*]

559. DELEGATES FROM THE CANTON OF TICINI. December 14, 1889. Through Summary Prayers. A SUMMARY OF THE FACTS. A certain Bernardinus Monti, from the district of the Canton of Ticini, who died in America in the year 1882, bequeathed the sum of 2558 florins to the parish church of his birthplace, dedicated to the Defender, located in Fiesso, under the following condition: that half of this sum be allocated to Masses, and the other half be distributed among the poor who belong to the aforementioned Sodality of the Church. However, the parish priest and the faithful of this place have requested that 2000 florins be added to the endowment of the chapel, for the following reasons: because this church is very distant from the parish; which can be reached with great difficulty, especially during the harsher and longer winters; because the faithful of Fiesso constitute a significant portion of the parish; because the current income of this chapel barely reaches 526.62 florins; which is insufficient to provide for the chaplain; because there is only one poor family in the place who has already received alms from the Monti bequest, and who sends a message to the authorities requesting further assistance that they might receive; because the sum of 558 florins has already been reserved for Masses. The Ordinary strongly recommended the prayers, as they seemed to be based on truth. A SYNOPTIC DISCUSSION. The request, therefore, pertains to allocating only 850 florins to the celebration of Masses, rather

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than 1279, as stipulated by the testator's will, in order that the remaining 721 florins, together with the money left for the poor, and freed from the poor's renunciation, may be used to increase the endowment of the chapel. Furthermore, there may be a slight violation of the testator's will in this matter; however, it is certainly not a serious one. Provided that, with regard to...

[*Latin ed. p. 560*]

§60 To the legate of the poor, Antonius of Ticini, when those who might have the right to it, having held assemblies, sent a message to him, and declared that they preferred to provide assistance to the needy, both spiritual and material, rather than temporal matters, for which they are not properly obligated; hence, in this regard, the matter is clear. Indeed, it is said that the testator intended to establish a perpetual endowment for the poor, and therefore held assemblies of the people to decide on this matter, as if it were his own property; however, regarding this perpetuity, or the instruction that the endowment should be invested and that only the proceeds should be distributed to the poor, not a word, nor even a syllable, is found in the documents: rather, the very wording of the text seems to suggest the opposite, and the word "distribute," which the testator used not without reason, confirms this. Regarding the addition of 721 masses to the endowment of the chapel, the wording of the will certainly contradicts this; however, the Council of Trent permitted alterations to the testator's last wishes for a just and necessary reason, Session 22, chapter 6, On Reforms: and in this case, a just reason seems to be lacking; since the Sacred Congregation of the Council has not infrequently granted a reduction in the number of masses for the proper support of the parish priest, and even of canons, as, for example, in the reduction of masses in January, June 1, 1861, in Squillacen, and in the reduction and cancellation of masses on September 26, 1857, and in other instances cited there; and this is done more easily for the good of the church and the parish, as is evident from the reduction of masses on January 25, 1862, and other instances cited in Brixen. Furthermore, if the chaplain is requested for several years to offer prayers in memory of and for the benefit of the benefactor for one or both masses, both requests should be granted, so that the essential will of the pious testator may be preserved, and at the same time, so that the endowment of the benefice may be appropriately increased. With these considerations in mind, the question arises as to what should be done in response to the requests. RESOLUTION: The Sacred Congregation of the Council, having considered the matter, gave the following response on December 14, 1889: For the sake of propriety, let the matter be discussed with His Most Holy...

[*Latin ed. p. 561*]

561. FERETRANA JURISDICTION. December 14, 1889. By Summary

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Proceedings. Concerning the dismemberment of the parish of St. Marinus within the jurisdiction of the Republic of the same name, in order that a new parish might be established under the rock of the mountain in the suburb of St. Anthimus, the Sacred Congregation of the Council (S. C. C.) on January 19, 1889, judged that the place was indeed suitable for dismemberment, "but in such a way that the new benefice, neither from the assets of the old parish, nor from a new assignment of revenues by the Supreme Council, should be endowed, but should be of free collation, as is due by law." This judgment was confirmed by the S. C. C., prohibiting the further presentation of the question in the elections of July 6th. However, the administrators of that Republic were displeased to have been excluded from exercising patronage in the new parish, under the aforementioned conditions. Regarding this matter, the Bishop of Feretrana considered it necessary to address the S. C. C. with these words: "I humbly beseech, Most Eminent and Reverend Fathers, that you permit me to send and present to this Sacred Congregation the petitions which, although they do not refer to the dismemberment of the parish church of St. Marinus, nor to the erection of a new parish in that larger suburb, nevertheless concern the matter itself, in conformity with the two recent decisions regarding the decree of free collation for the new parish to be erected." "However, the government of the Republic, or the Supreme Council, claims for itself the entire right of patronage in the new parish, so that it may not seem that its rights are diminished, as it has already declared twice since the beginning of the discussions: that nothing prevents the erection of a spiritual care in the suburb, provided that the right of patronage is preserved, as a necessary condition. This declaration appears to be entirely to be considered, and to be treated with equity and justice. For although law is an individual matter, and the right to name [the pastor]..." *COMPENDIUM FACTI. Acta, Tom. XXII. fase. CCLXI. 36*

[*Latin ed. p. 562*]

562 The right of patronage, when presented to the parochial church, remains entire; however, if the right itself does not diminish, it diminishes in its dignity and nobility. For it is one thing to have the right to name the archpriest of the parochial church, which is the head of the entire Republic, and another to have the right concerning half the territory of that same parochial church, and the care of souls in a new suburb to be assigned to a new parish priest. And for this reason, the government itself, as I understand from its letters, believes that the aforementioned patronage pertains to it; and it does not wish the patronage to be diminished, at least not in dignity and nobility, but rather to be extended to the new parish, whose territory is separated from the parochial church under patronage, so that one part does not, in a certain way, lack what the other receives, and so that one is not considered different from the other in any way. And

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although, as I have noted, the right of patronage is of an individual nature, nevertheless, the reasons that follow from it, namely the rights, duties, and obligations assigned to the patron, seem to give the aforementioned reservation of patronage some reason, or title, as I have stated in my letters dated December 27, 1882, in which I did not fail to point out that there is also the dignity and supreme power of the patron, which the Council of Trent sought to encourage in abolishing patronages, although by a different means than in this case, but nevertheless not to be disregarded, especially considering what that government has accomplished so far in preserving ecclesiastical goods, without any precedent or instigation. "Furthermore, the government itself believes that the patronage is due to it in the church of St. Anthime, in which the new parish is to be established, even though it is not clearly evident from certain documents, as I have already indicated." "What was falsely alleged from the beginning by the opponents of the new parish, namely that the Republic and its citizens would be disturbed by the erection of the new parish, is now, by the consent and harmony of all, rejected, and all things proceed peacefully and tranquilly." "Therefore, what remains is the question of the right of patronage, which, if not granted to the government, may perhaps have been worked for in vain; for the government, as I have indicated, insists that the patronage is due to it in the new parish. Therefore, under-"

[*Latin ed. p. 563*]

"The Reverend Father from Feretrana wrote, expressing his opinion that, since what is lacking regarding the matter in question may be supplied by benign grace, and in order that the supreme Council of the Republic may grant the right of patronage, which it desires, to the new parish, it should be exercised in accordance with the regulations established by this very Sacred Congregation on January 27, 1847, concerning the conferring of the benefice, namely, through the presentation of three suitable priests, who are admitted to the competition among themselves. As a testimony of this benevolent concession, this Council will continue, as it has always done, to foster and protect the ecclesiastical institutions in this area, which are so important for the welfare of all. " "These matters were to be submitted to the wise judgment of this Sacred Congregation." After these preliminary remarks, the question was raised as to what should be answered. RESOLUTION. The Sacred Congregation, having considered the matter on December 14, 1889, decided to respond: "Regarding the granting of the privilege of presenting a candidate for the new parish church, in accordance with the form of concession of January 27, 1837." (1) FROM THE SACRED CONGREGATION FOR RITES: DECREE concerning the canonization of the Blessed John Baptist de la Salle, founder of the congregation of the Brothers of Christian Schools. At the request of Father Robustiano, from the Congregation of the Brothers of Christian Schools, promoter of the cause of

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canonization of the aforementioned Blessed John Baptist de la Salle, while His Eminence and Most Reverend Lord Cardinal Thomas [Maria Zigliara, Relator of the aforementioned cause, in the ordinary meetings of the Sacred Congregation for Rites, held on the designated day at the Vatican], proposed the following question: "Whether a commission for the resumption of the cause should be appointed in this case and for this purpose."

[*Latin ed. p. 564*]

564 ^ From the Sacred Congregation of Rites, after careful consideration of all matters, and after hearing the Reverend Father Augustine Caprara, Promoter of the Holy Faith, they responded: "Affirmatively, if it pleases the Most Holy [Pope]." On December 17, 1889. After all of the above was faithfully reported to the Most Holy Lord, our Pope Leo XIII, through the undersigned Secretary, His Holiness, accepting the judgment of the Sacred Congregation, deigned to sign the commission for the resumption of the cause of the blessed John Baptist de la Salle, confessor. On January 22, 1890. Cardinal Aloisi-Masella, Prefect of the Sacred Congregation. Reverend Father Vincent Nussi, Secretary of the Sacred Congregation.

DECREE of Canonization of the Blessed Alphonsus of Orozco, of the Order of Hermits of Saint Augustine, Province of Spain. At the request of the Reverend Father Sebastian Martinelli, General Postulator for the Causes of Beatification and Canonization of the Servants of God of the Order of Hermits of Saint Augustine, and after the Most Reverend and Illustrious Lord Cardinal Lucidus Maria Parocchi, Bishop of Albano Laziale, Relator of the aforementioned cause, in the ordinary meetings of the Sacred Congregation of Rites, held on the date indicated at the Vatican, proposed the following question: "Whether the commission for the resumption of the cause should be signed in this case, and for the purpose of what is being considered?" The Most Reverend and Illustrious Fathers, Prefects of the Sacred Congregation of Rites, after careful consideration of all matters, and after hearing the Reverend Father Augustine Caprara, Promoter of the Holy Faith, responded: "Affirmatively, if it pleases the Most Holy [Pope]." On December 17, 1889. After all of the above was faithfully reported to the Most Holy Lord, our Pope Leo XIII, through the undersigned Secretary, His Holiness, accepting the judgment of the Sacred Congregation, deigned to sign the commission for the resumption of the cause of the blessed Alphonsus of Orozco, confessor. On January 22, 1890. Cardinal Aloisi-Masella, Prefect of the Sacred Congregation. Reverend Father Vincent Nussi, Secretary of the Sacred Congregation.

[*Latin ed. p. 565*]

565 FROM THE DECREES OF THE HOLY CONGREGATION OF INDULGENCES, concerning certain prayers to which indulgences are granted. I. MOST HOLY FATHER, The Catholic circle of Saint Ignatius

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of Loyola, existing in this venerable city, in order that the devotion to its patron saint may be increased, implores Your Holiness to grant some indulgence, applicable also to souls in Purgatory, to the Christian faithful who devoutly recite the following invocation, customarily repeated by the same Saint: "Lord, make me love you, and may the reward of my love be to love you more and more each day." For this grace... Our Most Holy Lord Leo XIII, in an audience held on March 15, 1890, granted, through the undersigned Secretary of the Holy Congregation, entrusted with Indulgences and Sacred Relics, to all Christian faithful, of both sexes, who, with at least a contrite heart, devoutly recite the aforementioned prayer, a hundred days of indulgence, applicable also to the deceased, to be gained once a day. This present grant is valid forever, without any brief being required. Notwithstanding any contrary decrees. Given in Rome, from the Secretariat of the aforementioned Holy Congregation, on March 15, 1890. C. CARD. CRISTOFORI, Prefect. L. f S. 8 A. ARCHIEP. NICOPOLIT, Secretary. II. MOST HOLY FATHER, Cardinal Caietan Aloisi-Masella, prostrate at the feet of Your Holiness, humbly requests that Your Holiness deign to grant some indulgence to all Christian faithful who devoutly recite the following prayer to Saint Joseph, composed by Saint Bernardino of Cento.

[*Latin ed. p. 566*]

S66 FROM THE DECREE OF THE HOLY CONGREGATION OF INDULGENCES: "Remember us, Blessed Joseph; and through the intercession of your prayers, plead with your presumed Son; but also, grant us favor, most Blessed Virgin, your Spouse, who is the Mother of Him who lives and reigns with the Father and the Holy Spirit, world without end. Amen." This grace... Our Most Holy Lord, Pope Leo XIII, in an audience held on December 14, 1889, by the undersigned Secretary of the Sacred Congregation for Indulgences and Sacred Relics, benignly granted to all the Christian faithful, who, at least with a contrite heart and with devotion, recite the aforementioned prayer, a hundred days' indulgence, applicable also to the deceased, to be gained once a day. This [indulgence] is valid for all time, without any brief being required. Notwithstanding any contrary decrees. Given in Rome, from the Secretariat of the aforementioned Congregation, on December 14, 1889. C. CARD. CRISTOFORI, Prefect. L. f S. >B A. ARCHIEP. NICOPOLIT, Secretary. 3 III. MOST BLESSED FATHER, Peter, Prelate of the Church of Saint Mary Secret in Milan, prostrate at your feet, humbly requests that you grant some indulgence to the Christian faithful who devoutly recite the prayer, here attached, which is said to have been composed by Saint Aloysius Gonzaga. The petitioner hopes that Your Holiness will grant this grace, especially because the third centenary of the death of the same Saint is approaching, and this grace would greatly contribute to increasing devotion to Him, especially among the young. And

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God. PRAYERS. Of Aloysius Gonzaga to the Blessed Virgin Mary. O my Holy Lady, Mary, through your blessed faith, and through your singular protection, and into the bosom of your mercy, I commend my soul and my body today and every day, and at the hour of my death: all my hope and my consolation, all my anxieties and miseries, my life and the end of my life, I entrust to you, so that through your most powerful intercession, and through your...

[*Latin ed. p. 567*]

From the Sacred Congregation for Indulgences, 567: May all my works be directed and ordered according to Thy will and the will of Thy Son. Amen.

To the blessed fidelity and singular protection of you, O most holy Mary, my Lady, I commend now and always, and especially at the extreme of my life, my soul and my body, and I surrender myself entirely into the bosom of your mercy: I place in you all my hope and comfort in the anxieties and miseries of this life; in you I trust in life and at the hour of death, so that through your most holy intercession and your merits, all things may be directed and ordered according to your will and the will of your Son. So be it.

His Holiness Pope Leo XIII, in an audience held on March 15, 1890, granted to all the Christian faithful of both sexes, who at least with a contrite heart and with devotion recite the aforementioned prayer, the indulgence of two hundred days, once a day, and also applicable to the deceased. This grant is valid forever, without any dispensation. Notwithstanding any contrary decrees.

Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on March 15, 1890.

C. CARD. CRISTOFORI, Prefect.

L. f S. A.

ARCHIEP. NIGOPOLIT, Secretary.

From the Sacred Congregation of Indices, Decree, Friday, March 6, 1890.

The Sacred Congregation of the Most Eminent and Reverend Cardinals of the Holy Roman Church, by order of His Holiness Pope Leo XIII and the Holy Apostolic See, concerning the Index of books of corrupt doctrine, and also concerning their proscription, expurgation, and permission throughout the Christian Republic.

[*Latin ed. p. 568*]

568 FROM the Most Holy Congregation of the Index, concerning the superiors and delegates, held in the Apostolic Palace at Vatican on March 6, 1890, it decreed and decrees, it condemns and condemns, or otherwise condemns and prohibits the following works from being included in the Index of Prohibited Books, and it ordered the following: *Mélanges sur

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quelques Questions agitées de mon temps et dans mon coin de Pays* by J.-M. Boulot, Curé of the Madeleine of Besançon. — Besançon. Imprimerie et Lithographie Dodivers et C., Grand-Rue, 87, and Rue Moncey, 8 bis — 1888. — The author commendably submitted and disapproved of the work. *Iudas de Keriot* — A Dramatic Poem by Frederich Soler of the Academy of the Catalan Language, Master in Gay Arts — Barcelona, Libreria de I. López, Editor, Rambla de Mitj, no. 20 — 1889. *Il Nuovo Rosmini* — A Scientific-Literary Periodical. — Milan, Tipografia Fratelli Rechiedei. — Decree of the Most Holy Office, February 26, 1890. Therefore, no person of any rank or condition may, under any pretext, publish, print, read, or retain the aforementioned works in any language, but rather they are obligated to deliver them to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters were reported to the Most Holy Pope Leo XIII by me, the undersigned, Secretary of the Most Holy Congregation of the Index. His Holiness approved the decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on March 22, 1890. CAMILLUS Card. GAZZELLA, Prefect. HYACINTHUS FRATI, of the Order of Preachers, Secretary of the Most Holy Congregation of the Index. With the Seal. On March 24, 1890, I, the undersigned, Master of the Curia, attest that the aforementioned decree has been affixed and published in the City. Vincentius Benaglia, Master of the Curia.

[*Latin ed. p. 569*]

569 APPENDIX VIII. In which are recounted more Decrees of the Holy Congregation of Rites. TAURINEN. From the Province of Emilia and Romagna, the Most Reverend Cardinal Caietani Alimonda, Archbishop of Turin, submitted the following question to the Holy Congregation of Rites, for opportune resolution, namely: among the Offices granted to the Archdioceses of Turin, that of the Most Holy Body of Christ is considered a notable miracle; it is asked whether it should be said: "Who appeared today in the Office, which as a votive offering is sometimes recited?" Furthermore, the Holy Congregation of Rites, after mature deliberation on the report of the undersigned Secretary, decreed as follows: It should be said in this case: "Who sits at the right hand of the Father." And so it declared. January 16, 1885. VALLEN. The present Master of Ceremonies of the Cathedral Church of Vallen, humbly submitted the following questions to the Holy Rites Congregation, to be declared: From the decree of the City and the World, published on July 5, 1883, it was granted to the Chapters the indulgence of reciting the Votive Offices throughout the year in place of the Feria Offices, and concerning the choral recitation after the Chapter election, it was made perpetual and approved by the Ordinary, and therefore its recitation is obligatory. Hence, it is asked: I. When, on a day not impeded by the Vigil of a Saint, and therefore the Office of the Feria occurs, together with

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three Readings from the Homily on the Gospel of that same Vigil, according to the general rubrics, whether the Votive Office assigned for that day or the Office of the Vigil should be recited in the choir? II. To the extent that the answer to the first part is affirmative, whether two Masses should be celebrated in the Cathedral Church, namely, one after the Third Hour for that Saint whose Votive Office has been recited, and the other of the Vigil after the Nones? And the Holy Congregation, after considering the report of the undersigned Secretary, responded to these questions as follows: To I. Affirmative to the first part; Negative to the second, according to the most recent rubric prefixed to the Votive Offices for the year. To II. Affirmative. And so it responded and declared. January 16, 1885.

[*Latin ed. p. 570*]

570 APPENDIX BRUNEN. The Most Reverend Lord Francis Salesius Bauer, the present Bishop of Brünn, having considered, on behalf of the diocese entrusted to him, the occasion of the imminent commemoration of the first millennium since the death of Saint Methodius, Bishop, humbly requested of the Sacred Congregation that images of the Saints, Pope Cyril and Methodius, not painted with sharp instruments on silk, but rendered with oil on linen or cotton cloth, be affixed to the backs of vestments to be presented as gifts to his churches. And the aforementioned Sacred Congregation, after mature deliberation, based on the report of the undersigned Secretary, judged that it should respond in the following manner in this case: It is permissible to use vestments with such images, provided that they are made of silk, or of gold and silver, and that, otherwise, they are made according to the norms of liturgical laws. And thus it responded and declared. On March 30, 1885. DECREE. The Sacred Congregation of Rites decreed that in the Mass for the Feast of the Chair of Saint Peter, both in Rome and in Antioch, when such feasts, being impeded on their proper day, are transferred to some day within the Paschal season, the Introit is omitted, and the following is said: VIII. Alleluia, alleluia. Ps. 88. Confiteantur Domino misericordiae eius, et mirabilia eius filiis hominum. St. Matthew 16. "You are Peter, and upon this rock I will build my Church." Alleluia. On March 31, 1885. BRIXEN. Reverend General Vicar of the Diocese of Brixen. The Sacred Congregation of Rites, in order to provide a suitable solution, humbly submitted the following questions regarding the blessing of bells, especially when several are to be blessed at the same time, since the Roman Pontifical is silent on this matter: Question I. After the seven preceding Psalms, are the bells to be washed alternately and without interruption, while the Psalms 145, 146, and the following Psalms in the Pontifical are recited only once? Question II. Is the anointing with the oil of the sick to be performed immediately after, on each individual bell, before the prayer "O God, who through the blessed Moses," which perhaps should now be said in the plural? Question III. Should the same

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be said of the other anointings? Are they to be performed alternately and without interruption on each individual bell, while the Psalm 28 is recited or sung, once (or more times if the anointings take longer)?

[*Latin ed. p. 571*]

VIII. Is it necessary that the prayer addressed to the Lord, and the subsequent prayer, be said in the plural form?

Doubt IV. Should there be as many censers as there are bells, with each censer placed near its corresponding bell, or is it sufficient to use only one censer, alternating its placement near each bell, while the Psalm is recited or sung once?

76. "The waters have seen thee, O God," and the subsequent prayer, is it to be said only once, or in the plural form?

Doubt V. A priest delegated by his Ordinary with the power of apostolic indulgence to bless a bell in a designated church, can he use his delegation to bless more than one bell if there are truly several bells belonging to the same church that are to be blessed simultaneously, even though the delegation letter speaks only of one bell?

Doubt VI. Is the special prayer, "Bless, O Lord, this water," etc., given in the Pontifical for the blessing of the sign or the bell, to be said by the Bishop as it is written in the Pontifical, namely in the singular number, or rather in the plural number, when several bells are to be blessed here and now, or when the Bishop blesses water for unforeseen circumstances, to be kept in well-sealed vessels and given later when the opportunity for blessing the bell arises?

Doubt VII. If blessed water is lacking from the Bishop, because the vessel containing the water may have been broken, or for some other accidental reason, what should the priest delegated by the Bishop with the power of apostolic indulgence do, when everything is prepared for the blessing of the bell, the Christian faithful are summoned and perhaps already gathered, and it is absolutely impossible to obtain the prescribed blessed water at the appropriate time?

And the Sacred Congregation, after carefully considering the abovementioned question, and at the earnest request of another of the Masters of the Apostolic Ceremonies, decided to respond to the doubts as follows:

To I, II, III, and IV. The unctions are to be performed over each bell individually, as if there were only one, while the prescribed Psalms are recited or sung once, and the prayers are said once in the plural number; the number of censers or vessels in which incense burns, must be equal to the number of bells, and placed near them.

To V. It can easily be understood that the delegation is granted for as many bells as are to be blessed; however, it is advisable, if possible, to request a clarification from the Ordinary in this matter.

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To VI. The water is to be blessed as many times as there are bells to be blessed, whether by the Bishop or by his delegate, and the special prayer given in the Pontifical is to be recited in the singular or plural number, as appropriate.

[*Latin ed. p. 572*]

372 APPENDIX: Blessing of one or several Bells. To Section II. Unless a delegate has been appointed, and in that case, if the delegate also has the faculty of blessing water, the blessing of the bell or bells must be omitted. And thus it was decreed and ordered to be observed, on April 14, 1885. CONCORDIEN. Concerning the mandate of the Most Reverend Bishop of Concordien. The Reverend Father Anthony, Canon of Belgrade, presently Master of Ceremonies in the seminary of his diocese, humbly submitted the following questions to the Congregation of Sacred Rites for appropriate resolution: Question I. Whether, besides the Bishop, the clergy can also sit when the celebrant incenses the altar with a complete confession, and recites the Introit and Kyrie? Question II. If, however, the clergy must stand both during the altar's incensing and during the recitation of the Introit and Kyrie, is it permissible to tolerate the custom of sitting? Question III. It has become customary, in the solemn Mass with the presence of the Bishop, for the celebrant Canon to give the kiss of peace to the assisting priest, who then brings him to the Bishop, and immediately to the Deacon, who also gives it to the Subdeacon and to the ministers serving at the Mass, lest these be disturbed in their office. Can this established custom be tolerated? VIII. And the Sacred Congregation, after considering the report of the undersigned Secretary, and also the fervent opinion of another of the Masters of Ceremonies of the Apostolic See, and the Most Reverend Assessor of the same Sacred Congregation, having carefully considered all matters, judged it fitting to respond to the aforementioned questions as follows: To Question I. Affirmative, to the first part, that is, during the incensing; Negative, to the second part, that is, when the Introit and Kyrie are recited. To Question II. As provided in the first. To Question III. To maintain the established order of ceremonies. And thus it was decreed and ordered to be observed. On April 14, 1885. TROIA. The Most Reverend Father Thomas Passero, presently Bishop of Troia, humbly submitted the following question to the Congregation of Sacred Rites for clarification: In the Cathedral Church of Troia, every year, with solemn ceremony, the Blessed Sacrament is publicly exposed for the adoration of the faithful in the form of Forty Hours; before the Most Holy Eucharist is reposed, a solemn procession is held within the church, with all the Canons of the Chapter walking, vested as prescribed in Pontifical Masses and Vespers. The aforementioned Bishop, doubting whether such a custom is contrary to the rubrics and decrees of the Sacred Roman Church, humbly requested

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whether it can be lawfully observed?

[*Latin ed. p. 573*]

Chapter VIII. The Sacred Congregation, after considering the report of the undersigned Secretary in the matter, decided that the aforementioned laudable custom could be maintained. And it responded as follows: April 14, 1885. AUXIMANA. The Dignitaries and Canons of the Cathedral Church of Auximana, who, by a privilege granted to them by Pope Innocent XIII, are permitted to wear the great cope at any time of the year, have nevertheless, adhering to the Ceremonial of Bishops (Book I, Chapter 4), deemed it fitting to lay aside the cope during the summer season and to wear cotta over the rochet. Now, they have requested that the Holy Congregation of Rites deign to declare whether the aforementioned Dignitaries and Canons may rather wear the cope, with the foxing removed, and instead, a red silk stole. And the Holy Congregation of Rites, after mature consideration of the report of the undersigned Secretary, decided to respond as follows: They may wear it in either manner, although the cope is to be considered more honorable, with the foxing removed. And thus it declared and responded: May 9, 1885. NANNETENSIS. The Most Reverend Lord Julius Francis Le Coq, the present Bishop of Nantes, humbly submitted the following questions to the Holy Congregation of Rites for appropriate resolution: Question I. In the year following, 1886, the solemnity of the Holy Apostles Peter and Paul, transferred for Gallus, falls on the Sunday to be celebrated on July 4th. Furthermore, on the same day, the solemnity of the Most Sacred Heart of Jesus is celebrated in the Diocese of Nantes by special indult, whose feast is observed there according to the rite of the first class. This solemnity takes the place of the solemnity of the Octave of Corpus Christi, which was formerly celebrated there, and concludes for the people the series of Masses, blessings, and processions that are held in honor of the Most Holy Sacrament during the week following the Sunday on which the solemnity of the feast of Corpus Christi is celebrated. The question is: How should these solemnities be arranged? Question II. Whether, both in the case of coinciding and of concurring feasts, any secondary feast, whatever it may be, celebrated according to the rite of the first class, should have precedence over primary feasts celebrated under the same rite, but of lesser dignity? And the Sacred Congregation, after mature consideration of the report of the undersigned Secretary, decided to respond as follows: To Question I: The solemnity of the Most Sacred Heart of Jesus should be transferred to the following Sunday. To Question II: Postpone. And thus it responded: May 29, 1885.

[*Latin ed. p. 574*]

APPENDIX VIII, CONCERNING CERTAIN MATTERS.

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I. A certain doubt was raised, namely: Whether, according to the rubrics of the Roman Breviary, the procession, which, on the Sunday after Easter or Pentecost, ought to be omitted on certain festive days, should be performed immediately before the solemn Pontifical Mass, even if it precedes the Pontifical Office; and whether this practice appears contrary to the Ceremonial of Bishops, as requested by the Most Reverend Raymond Martinez, Bishop of Oriol, and whether, after the solution of the following doubt, which was humbly requested by the Sacred Congregation of Rites, this practice can be tolerated, or rather, whether the cloistered procession, if it must be performed, should be completed before the third hour, immediately preceding the Pontifical Mass?

II. And the same Sacred Congregation, in relation to the following question, which was presented by another of the Masters of the Apostolic Ceremonies, and after mature deliberation, decided to respond as follows:

Let the laudable custom observed in the Patriarchal Basilica of the Lateran Palace be maintained, namely, that the cloistered procession is omitted. And thus it was written and commanded to be observed. On May 29, 1885.

NAMURCEN.

Furthermore, the Sacred Congregation of Rites, at the request of the undersigned Secretary, and with the earnest desire of another of the Masters of the Apostolic Ceremonies, considered the following questions and decided to respond as follows: The Most Reverend Edward Joseph Belin, the present Bishop of Namurcen, requested this from the Sacred Congregation of Rites.

[*Latin ed. p. 575*]

APPENDIX To the Decree to be Observed in a Lycian [Province], on the 4th of April, 1705. (1) Regarding II: To be affirmed or positively answered. Regarding III: Negatively. Regarding IV: Affirmatively, if the image is venerated with great devotion by the people. And thus, it was declared and written. On the 29th of May, 1885. ARETINA, By order of the Most Reverend Bishop of Arezzo, the current editor of the annual calendar for the clergy of that diocese, humbly submitted the following questions to the Sacred Congregation of Rites, namely: Question I. Since the votive Office of the Immaculate Conception of the Blessed Virgin Mary can be recited on Saturdays, as well as during the Four Seasons and within the periods of Lent and Advent, according to the Indult of April 25, 1806, with a lesser double rite; it is doubted whether such a concession extends also to those Saturdays on which, according to the rubrics, votive Offices cannot be recited. Therefore, the question is: Should the same Office be recited on the Saturdays of Lent, Advent, the Four Seasons, and Vigiliae [Bisceglie], with a lesser double rite, or, according to the more recent rubric, with a semi-double rite (Rubric VIII. 575)? Question II. The Octave of the Assumption

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of the Blessed Virgin Mary is so privileged for the Diocese of Arezzo, that only Offices of the first or second class are permitted to be transferred within it. In the diocesan Proper, there are readings for each day of the Octave. The current editor of the calendar has taken the Offices of the days within the Octave from the Roman Breviary or from the Proper, and has completely neglected those Offices which were accidentally omitted. Formerly, when the feast of Saint Joachim was celebrated on August 19th, the readings of that day were transferred to the following day, August 20th, and so on, and the readings of August 21st, assigned to that day, or the seventh day within the Octave, were omitted. What should be observed in the future? Question III. Since the feast of Saint Gregory X, Pope, which falls on the proper day of January 10th, cannot be transferred during the octave of Epiphany, it was transferred as if to its proper place on January 28th, as is now celebrated. However, this day should be left free in the calendars for the feast of the Most Holy Name of Jesus, when the Sunday of the II of January falls on Septuagesima, and in... (1) LYCIAN. QUESTIONS. 5. Should the Offices of the Saints, whether optional, double, or semi-double, which occur on a day on which the Office of Sunday must be anticipated, either before Septuagesima or before the Sunday of the XXIV after Pentecost, be transferred, or rather omitted, or should the aforementioned Office of the Saint be recited on that day, and only a commemoration of that Sunday be made? Answer 5. The Offices of the Saints should be omitted.

[*Latin ed. p. 576*]

576 APPENDIX VIII; concerning the 16th of February, it is truly the first free day in the Diocesan Calendar; it is asked whether, in the case of the impediment mentioned, the Feast of the Most Holy Name of Jesus should be transferred to the 28th of January or to the 16th of February? Doubt IV. Can the Office of the Blessed Virgin Mary, Mother of the Divine Shepherd, for the First Sunday of May, be transferred in the case of an impediment to the first free Sunday following? Doubt V. It is also asked concerning the Offices of the Motherhood, Purity of the Blessed Virgin, and also of her Help, on the Sundays of the 2nd, 3rd, and 4th of October, which are affixed? Doubt VI. According to the recently revised rubrics, if the 15th of September, on which the Feast of Saint Cornelius, Pope, and Saint Cyprian, Bishop, is celebrated with a semi-double rite, falls on a Sunday, should the Office for the Sunday be celebrated? But if this Sunday falls on the 3rd of September, according to the civil reckoning, then the Feast of the Seven Sorrows of the Blessed Virgin Mary, which is celebrated with a greater double rite, should be celebrated; in this case, it seems that the Office for the Seven Sorrows should be celebrated, together with the Commemoration of the Sunday and of the Saints. Is this opinion false? Doubt VII. Within the Octave of Corpus Christi, when the Office is celebrated, should the ninth historical reading, which occurs with a semi-double rite, be omitted, as

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reduced to the level of a simple rite, according to the revised rubrics? Doubt VIII. The Cathedral Church of Arezzo is dedicated to the solemnity of the Most Holy Apostles Peter and Paul, while the titular saint is Saint Stephen the Protomartyr, whose feast is observed with the same rite, namely a first-class double with an Octave. Is it necessary to celebrate the feast of the titular saint of the Cathedral, that is, of Saint Stephen, with a first-class double rite throughout the entire Diocese, or only in the Cathedral itself? Doubt IX. In the Diocese of Arezzo, among the Suffrages of the Saints, after the Commemoration of the Blessed Virgin, there is another for Saint Michael the Archangel; it is asked whether this should be omitted when the Office of the Holy Angels is celebrated, and if it should be celebrated, which prayer should be said? Doubt X. A religious, who, according to the constitutions of his Order, is bound to recite the Antiphon Salve Regina with the words "Ora pro nobis" and the prayer "Omnipotens Deus," at the end of Mass, must he recite the Antiphon Salve Regina and the prayers recently prescribed again afterwards? Doubt XI. Where an unforgettable custom of administering the Most Holy Sacrament of the Eucharist outside of Mass with a stole of always white color prevails, can such a custom be tolerated? Doubt XII. After celebrating Mass, must the priest incline before the altar cross, before descending to recite the prescribed prayers; and when reciting these prayers, must he genuflect only at the footstool, or on the lowest step of the altar? And the Sacred Congregation,

[*Latin ed. p. 577*]

VIII. After carefully considering the report of the undersigned Secretary, and also a request from another of the Masters of the Ceremonies of the Apostolic See, and after mature deliberation, it was decided to respond to the following questions, namely: Regarding I. Whether a particular Indult, with its exceptions, should be maintained, or whether a new one should be accepted, subject to a semi-double rite. Regarding II. On each day of the Octave, if it is an Octave, the readings assigned in the Proper should be read, if they are available; otherwise, those that are found in the Breviary. The same should be observed if it is the Office of the first or second class, which does not have proper readings. Regarding III. In the case of the Feast of the Most Holy Name of Jesus, the first free day should be observed, while retaining the feast of Saint Gregory on January 28th, already fixed. Regarding IV. and V. Without an Indult, negatively, and the Offices announced that year should be omitted. Regarding VI. The statement made is correct. Regarding VII. The rubric in title concerning Commemorations, number 10, should be observed. Regarding VIII. The custom should be observed. Regarding IX. The rubric preceding the votive Offices should be observed. Regarding X. Affirmative, according to the approved practice of the respective Order. Regarding XI. The Roman Ritual should be observed. Regarding XII. The inclination, in this case, is

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not to be prescribed nor prohibited, and genuflection should be made at will, either in the sanctuary, or on the lowest step of the altar. Minutes, Volume XXII, page 262. 577 And thus it was decided, declared, and ordered to be observed. June 18, 1885. MARIANOPOLITANA. The Reverend Mr. Edward Faber, Bishop of Marianopolitan, humbly requested a solution to the following questions from the Holy Roman Church: Question I. Whether the personal privilege granted by the Decree of July 5, 1883, to recite Masses and celebrate them in a festive manner, outside of churches to which votive Offices have been properly added to the Calendar, should be understood in such a way that, in sung Masses and Vespers (saving that Masses should be celebrated in the stricter votive manner), not even a Commemoration of the same should be made? Question II. Whether on Palm Sunday and on the Sixth Day of Holy Week, it is permissible to sing the other parts of the Office where the Passion is read entirely by the Celebrant, if Deacons are lacking, except for the end, which, according to the rubric, is sung in the tone of the Gospel? Question III. Whether, on the Vigil of the Four Seasons, which occurs on a Saturday, the Bishop conferring Orders, should not only make a Commemoration of the Vigil through prayers, but also read the Gospel of the Vigil at the end? Question IV. Whether images, which are usually affixed with the fourteen Stations of the Cross to instruct the faithful and to foster their piety...

[*Latin ed. p. 578*]

578 APPENDIX: Can votive Masses, even without a dedication, be celebrated during the Octave of a feast? Doubt V. Does the Decree issued in Marianopolitana on November 29, 1878, which establishes that a certain oratory consecrated there had the right to celebrate both the Octave and the titular feast itself, as well as its dedication, extend to oratories of the same kind that are simply blessed, in the sense that their titular feast should be celebrated during the Octave? Doubt VI. Does the title, assigned by the authority of the Bishop during the act of consecration or blessing, to any oratory perpetually dedicated to divine worship and, in particular, to the celebration of the Mass, automatically grant it, at least initially, the right to celebrate its feast (and also its dedication, if it is consecrated) according to the rite of the First Class with the Octave, provided, however, that the exercise of this right does not begin unless certain conditions are met, and that if these conditions are not present from the beginning or are subsequently lacking, the exercise of this right is suspended? Doubt VII. Are three things required and sufficient for the exercise of the aforementioned right: I. That the oratory be open to all the faithful, or at least be used not by a private family, but, for example, by people residing in seminaries, hospitals, etc.; II. That certain ecclesiastical functions or, at least, the offering of the Divine Sacrifice be regularly performed there according to the disposition of the Ordinary; III. That it be assigned to a cleric with a benefice, or to a

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community, to recite the canonical Office in the choir, or to a congregation consisting of clerics initiated into the sacred orders, or to a priest appointed by the Bishop to be the proper Rector of the oratory? Doubt VIII. In the aforementioned oratories, which, due to the lack of the aforementioned third condition, are deprived of the celebration of the titular feast (and of the dedication) with the Octave, is it permissible, according to the Decrees issued in Compostellana on April 8, 1808, paragraphs 8, and in the one issued by the Society of Jesus on September 18, 1877, to sing the Mass of the Title (and of the Anniversary of the Dedication), with the solemnities that the rite allows, and with the Commemorations of the Office of the current Sunday or major feast day, even if the Office is accidentally transferred? Doubt IX. If this Mass is sung, should other readings that are normally celebrated there be similarly read from the Title (or from the Dedication)? Doubt X. Two tables regarding the celebration of Mass in a foreign church were published in 1859 as approved by the Secretary of the Sacred Congregation of Rites (a copy of which has already been presented as an appendix); it is asked whether these tables can and should be observed, or whether the general rule should be followed, according to the force of which (except for a few...

[*Latin ed. p. 579*]

XVIII. Cases of exception regarding Conventual Mass, Mass of the Blessed, etc. Does the priest read Mass according to the calendar of another Church, unless when in it the Office of the double class or equivalent to the double class is celebrated with a different color, or when it is the title of a feast whose solemnity attracts the gathering of the people? Doubt XL. Do the rules concerning the celebration of Mass in a foreign church apply similarly in: I. In chapels, at least those blessed, or whose feast is the titular feast, is the Octave celebrated or not? II. In places temporarily, until a church or chapel is erected, designated by the Ordinary for the celebration of Mass, etc.? III. In small chapels outside the main chapel, among ecclesiastical communities, etc., with the appropriate permission and regulations? Doubt XII. Does the rubric, which commands that the bell be rung by the minister of Mass, apply to chapels of this kind, in which mostly only the celebrant and the minister are present? Doubt XIII. Whether the prayers to be recited before the Most Holy Sacrament exposed outside of Mass and the canonical Hours should be sung in the sixth tone, or rather with a double inflection of the voice from Fa to Re? And the Sacred Congregation, after carefully considering the aforementioned report of the Secretary and the earnest request of another of the Masters of the Sacred Ceremonies, decided to respond to the proposed doubts as follows: To I. Affirmative. To II. The method prescribed by Benedict XIII for rural churches should be observed. To III. Affirmative for the first part, negative for the second. To IV. Affirmative. To V. For simply blessed

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chapels, negative, and the Decrees should be observed. To VI. If the chapel is consecrated, it has the right to be used as a public consecrated church; if it is blessed, provision is made in V. To VII. If the chapel is consecrated, the simple consecration suffices. To VIII. If the chapel is consecrated, the same rules should be observed as in a church; if it is blessed, provision is made in V. To IX. If it is consecrated, Affirmative. To X and XI. The general rule must be observed even in chapels, except for purely private ones. To XII. The bell must be rung in Mass even in private chapels. To XIII. The prayers in this case are to be sung in the sixth tone with a single inflection of the voice at the end of each prayer. And thus it responded, declared, and commanded to be observed. July 18, 1885. URGELLEN. The present Cathedral Church of Urgellen, of the Sacred Ceremonies.

[*Latin ed. p. 580*]

580 APPENDIX VIII. The Director of the Calendar of the Diocese, with the consent of the Most Reverend Bishop, humbly submits the following questions to the Congregation of Sacred Rites:

Question I. The Sacred Congregation, under the date of March 10, 1791, granted an Indulgence at the request of the Most Reverend Archbishop of Tarragona, so that, in that year and in subsequent years, whenever the Feast of Saint George, the principal Patron of the entire Principality of Catalonia, should fall on a Friday or Saturday of the Greater Week, or on the Holy Sabbath, that same Feast, with its Office, Mass, Octave, and the obligation to hear Holy Mass, should be transferred to the second day after Sunday in Albis. However, by a Decree of May 2, 1867, the obligation to hear Holy Mass on the aforementioned Feast is no longer granted, and by another Decree of the Sacred Congregation of September 6, 1881, the Most Holy Pope Leo XIII declared the Blessed Virgin Mary, under the title of Monte Serrato, to be the principal Patron of the same Province or Principality of Catalonia, and granted that her Feast should be celebrated on the last Sunday of April; therefore, it is asked whether the aforementioned Decree of March 16, 1791, should be maintained, and accordingly, in the following year, 1886, should the Feast of the Finding of the Holy Cross be transferred if it occurs on the second day after Sunday in Albis, which is May 3rd; or rather, should the Feast of Saint George be transferred from then on in such a case to the first free day, according to the Rubrics?

Question II. Since the Authors hold differing opinions regarding the sprinkling of the altar with lustral water in which the Most Holy Sacrament is exposed; it is asked whether the sprinkling of the altar with blessed water should be omitted in such a case, or whether it should be performed? And, to the extent that the affirmative is given to the second part, whether the sprinkling of the altar should be omitted in such a case?

Question III. Whether the ancient practice of making a profound bow, not only of the head, but also of the body, before and after the incensation of

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the Blessed Sacrament, can continue; although in the Decree of the Sacred Congregation of March 26, 1859, addressed to Tarnovien, only a profound bow of the head is required? Also, whether the bow made by the Celebrant to the Cross before departing from the altar after the completion of Mass, and again to the Cross, or the principal image in the sacristy, should be a profound bow of the head and body, as some grave authors teach, or whether it should be a profound bow of the head alone?

Question IV. In the new special Rubric placed in the Breviary before the Feast of the Most Holy Name of Jesus, on the second Sunday after Epiphany, it is written: "If the Sunday of Septuagesima occurs, this Feast is transferred to January 28th as its proper day (and any other Feast that may occur there and can be transferred is transferred, unless it is of higher rank)." Now, since throughout all of Hispania the Feast of Saint Julian, Bishop and Confessor, is celebrated on January 28th, under a double Rite.

[*Latin ed. p. 581*]

In the Eighth Instruction, Second Class (and indeed, with the Octave in many Dioceses), the following is questioned: Whether the decrees of the Holy Roman Church, issued on September 1st, 1790 in Barcelona, and on August 11th, 1877 in Oveten, to Instruction VII, page 2, should be considered abrogated; and whether, therefore, the Office of Saint Julian should be transferred whenever the Feast of the Most Holy Name of Jesus, which is celebrated on the aforementioned Sunday after Epiphany, must be removed for any reason, or whether, if the Office of the Most Holy Name of Jesus is transferred to the first free day according to the rubrics, the Office of Saint Julian should be observed on the aforementioned day of January 28th.

Question V. When the Bishop is present, not in his seat before the altar, but in a seat or stall in the choir located in the middle of the church, a considerable distance from the altar, can the celebrant and the ministers proceed together to the choir after the aspergillum has been sprinkled, and can the ministers receive the sprinkling from the Bishop with a deep bow in that place, or rather, should the celebrant sprinkle them there after the Bishop has sprinkled him?

And the Sacred Congregation, after carefully considering the report of the undersigned Secretary, and after a thorough deliberation with another of the Masters of the Apostolic Ceremonies, decided that the following answers should be given to the questions posed, namely: To the first question, affirmatively to the first part, and negatively to the second part. To the second question, after the exposition of the Most Holy Sacrament, only the altar is sprinkled.

To the third question, consult approved authors.

To the fourth question, negatively to the first part, and affirmatively to

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the second part.

To the fifth question, the ministers, as they proceed with the celebrant, are to be sprinkled together with him by the Bishop.

And thus it was written, declared, and ordered to be observed.

On July 18th, 1885.

EUGUBINUS.

The Most Reverend Lord Innocent Sannibale, the present Bishop of Eugubinus, humbly submitted the following question to the Sacred Congregation for a suitable solution:

The old table of the altar, beneath which the relics of Saint Ubaldo, Bishop, rest, which was consecrated long ago in the manner of a fixed altar, and which was recently removed in order to restore the altar, and which has now been replaced, consists of a stone measuring 2.27 meters in length and 0.52 meters in width, to which a marble zone, like a crown, is attached by joined plates; thus, the table does not consist of a single stone, as is prescribed for fixed altars.

Therefore, the question is: What should be done in the new consecration?

And the Sacred Congregation, after carefully considering the report of the undersigned Secretary, and after a thorough deliberation with another of the Masters of the Apostolic Ceremonies, decided that the following answer should be given to the question posed:

[*Latin ed. p. 582*]

582 DECREE: If an altar is to be consecrated as fixed, it must be properly constructed with a single, solid stone slab, according to canonical prescriptions. And thus it was decreed. On August 29, 1885, in FULDA. The Most Reverend Lord George Kopp, the current Bishop of Fulda, humbly submitted the following question to the Sacred Congregation of Rites for a suitable solution: In the Cathedral Church of Fulda, dedicated to the Most Holy Savior and formerly attached to the old Monastery, the Feast of the Transfiguration of the Lord has only recently been celebrated as a titular feast, according to the rite of the first class, with an Octave; yet, the commemoration of this feast is not included in the litanies of the Saints: instead of the local patron, namely St. Simplicius, Martyr, only the patrons of the diocese, namely St. Boniface, Martyr, Archbishop, and St. Sturmius, Abbot, whose bodies rest in the aforementioned Cathedral Church, are commemorated, and their names are added in the prayer "A Cunctis." The question is whether such a custom can be maintained; whether, in the future, the prayer of the Transfiguration should be restored as the titular prayer among the litanies, and whether the name of the titular feast should be omitted in the prayer "A Cunctis"? XVIII. And the same Sacred Congregation, after mature deliberation and with the exquisite opinion of another of the Masters of the Apostolic Ceremonies, having approved the proposed solution,

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thus responded to the aforementioned question: The commemoration of the titular feast of the Most Holy Savior should be added to the litanies through the aforementioned prayer. Regarding the other feast, both in the litanies and in the prayer "A Cunctis," St. Simplicius, Martyr, should be placed first, and then, considering the custom, St. Boniface, Archbishop, Martyr, and St. Sturmius, Abbot, should be retained. And thus it was decreed and ordered to be observed. On August 29, 1885, in CARTHAGE. In the Diocese of Carthage, for a greater solemnity and splendor, especially during the processions of the Greater Week, when images of the Sorrowful Virgin are carried through the public streets, it is customary to carry a baldachin (in Spanish, "palió") extended above, which is of the same shape as that used to solemnly carry the Most Holy Sacrament, but of a different color, usually blue. This also applies in the city commonly called "Humilia"; however, in such a case, this blue pallium is only unfurled if it rains, so that the images of the Virgin, called "of Sorrows and Anguish," may be carried in a triumphant, gilded chariot.

[*Latin ed. p. 583*]

XVIII. that they may be sheltered from the rain. When, however, doubt arose concerning the use of such a baldachin, this matter was brought before the Sacred Congregation of Rites for a proper declaration, with the consent of the Most Reverend Bishop of Carthage. The Sacred Congregation of Rites, after considering the matter carefully, and upon the recommendation of another of the Masters of the Sacred Ceremonies, decided to respond in the following manner: In this case, its use may be permitted. And thus it responded. On September 7, 1885, in FESULANA. The Most Reverend Lord Ferdinand Masoni, Canon Theologian and Editor of the Calendar of the Diocese of Fiesole, with the consent of his Most Reverend Bishop, proposed the following question to the Sacred Congregation of Rites, seeking a solution, namely: Whether, on the feasts of the Holy Cross, when the Relic of the same is exposed on the altar, the celebrant, in a sung Mass, ought to incense the image of the Crucifix placed in the principal location, and then the Relic of the Holy Cross, or whether he ought to incense only this Relic, omitting the incense for the Crucifix? And the Sacred Congregation itself, upon the report of the undersigned Secretary, and with the careful opinion of another of the Masters of the Sacred Ceremonies, decided to respond in the following manner: Affirmative to the first part, negative to the second. And thus it responded. On September 23, 1885, in RHEMEN. The following questions were submitted by the Most Reverend Ordinary of the Diocese of Rhemen to the S. R. C. for a proper solution, namely: Question I. Whether in the Prayer of Saint Isidore the Farmer, the surname "Agricola" should be said. Question II. In the Postcommunion of the Mass of the same, whether the final part, "that we may feel the effect of the cult of Saint Isidore the Confessor whom we venerate," should

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be recited. Question III. On the Feast of the Precious Blood of Our Lord Jesus Christ, whether the conclusion of the Prayer is made with the words "Who lives" or "Who lives with you," or rather, "Through the same Lord." Question IV. In the Mass of Ordination, whether the Commemoration of the Simple should be made; or rather, whether it should be suppressed, as the Commemoration of the Double. Question V. In the Mass of Requiem for a Cardinal Priest, but Bishop, consecrated and assigned to a Church, whether it should be said as taught by Castaldi (Praxim Caerem. lib. II. sect. VI. cap. V. n. 6), "God who among... made your servant N. a Cardinal Priest to flourish in pontifical dignity," or rather, "God who among... made your servant N. a Cardinal Bishop to flourish in pontifical dignity?"

[*Latin ed. p. 584*]

584 APPEN] Doubt Regarding Votive Masses. Concerning votive Masses celebrated throughout the year for the Immaculate Conception, is it said in the Preface, "And you, in commemoration of the Immaculate Conception, or as in the Feast?" And is it said, "And you, in the Immaculate Conception?" Doubt VII. In the Lamentations of Jeremiah, recited in the Office of the Three Days of Holy Week, are the Hebrew letters Aleph, Beth, etc., pronounced, or rather, is only a musical harmony expressed by the organ in the choir? And the Sacred Congregation, after considering the report of the undersigned Secretary, and also having heard the opinion of another from the Masters of the Apostolic Ceremonies, after mature deliberation, decided that the following doubts should be answered as follows: Regarding I and II, it is so written in the original. Regarding III, the prayer should conclude: "Through Him, etc." Regarding IV, if the Mass of the feast day must be said in ordinations, the answer is affirmative to the first part, and negative to the second. However, if the Mass is a feria, as on the Saturdays of the Four Seasons and on the Feria of the Thirsty, this Mass does not admit of any commemoration of the Saints. Regarding V, it should be said in the former manner. Regarding VI, it should be said as in the Feast. Regarding VII, the Hebrew letters are to be pronounced. s. VIII. And thus it responded. On September 23, 1885. SENEN. A few years ago, in the Metropolitan Church of Senen, every year on the feast of the Assumption of the Virgin Mary, the Canons of the Collegiate Church, under the title of the Most Blessed Virgin, commonly known as Presenzano, usually attend the Pontifical Mass, although they sit in different stalls. Now, a doubt arose as to whether the aforementioned Canons, wearing only choral vestments, as well as the Canons of the Metropolitan Church, who are vested in sacred vestments and sit in their own stalls, should be incensed in a single manner; the following doubt was proposed to the Sacred Congregation of Rites, with the consent of the Most Reverend Archbishop of Senen, for a suitable declaration, namely: When the Canons of the aforementioned Collegiate Church attend the Pontifical Mass in the Metropolitan Church,

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are they to be incensed in a single manner, as has been done up to now, or in a double manner? And the Sacred Congregation, after considering the report of the undersigned Secretary, and also having heard the opinion of another from the Masters of the Apostolic Ceremonies, after mature deliberation, decided that in this case, the following should be answered: Nothing should be changed. And thus it responded and ordered that it be observed. On September 23, 1885.

[*Latin ed. p. 585*]

585 FROM THE HOLY CONGREGATION OF THE COUNCIL OF SPALATO. CONFRATERNITY. December 14, 1889, and January 25, 1890. Session 22, chapter 8, On Reforms. SUMMARY OF THE CASE. In the suburb of Magno Spalato, in the parish church of Saint Cross, a confraternity was established at the beginning of the 15th century, which received the name from Saint Cross. Its first statutes, commonly called the "Register," appear to have been completed in the year 1439; however, as the Ordinary states, they underwent modifications over time, with prior ecclesiastical authority. And so, in the year 1715, the old statutes were revised into a more suitable form, and were confirmed by the Bishop and by the civil authorities of the Republic of Venice, and remained in force until the present time. Except that recently, events have occurred concerning both the statutes and the existence of the confraternity, in which civil magistrates and tribunals, as well as the Bishop and Metropolitan, have held diverse and opposing opinions, so that the matter had to be brought before the highest judgment of the Holy Congregation. It is evident that the people in those places are miserably divided into civil factions, especially due to the rivalries and animosities that exist among the different groups of citizens, particularly in public affairs. Furthermore, before the year 1882, it happened that the so-called "national" faction won in the municipal elections, and, having ousted their opponents from the municipal offices, they introduced their own people into the municipality. Both factions, however, used their own instruments, which became municipal, that is, communal, by the very fact and by the action of each of their respective factions.

[*Latin ed. p. 586*]

586 SPLATEN. would occupy the administration. Consequently, after the year 1882, the assembly became a national municipal one. It was indeed customary that, during the octave of the Body of Our Lord, a solemn procession would take place from the church of the Holy Cross, with the participation of the pious confraternity, in the Magno suburb. Therefore, in the year 1882, or 1883, the parish priest of the Holy Cross and the treasurer, as it was their right and according to established custom, invited both assemblies, and the national assembly, being that year a municipal one, was

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assigned the first place by order of the curia. However, this did not please the majority of the confreres, who were attached to the opposing faction, and who, for this reason, attempted to use force to either relegate such an assembly to a lower position or to exclude it altogether. When the discord intensified, in order to prevent greater evils, armed force intervened. This was the beginning of disturbances; but soon, other and greater evils followed. Indeed, at the end of each year, the presidents, together with some of the senior members, the *vecchiardi*, must convene according to the statutes, in order to elect officials for the 'following year. Therefore, in the year 1883, several presidents and senior members convened, and elected the future leaders of the confraternity. This happened on October 27th. But after the election, for reasons I do not know, but it is not presumptuous to suppose that it was due to the motives of the civil factions, this did not please the majority of the confreres. Therefore, 89 confreres convened, and established the officials they deemed suitable. The Ordinary approved of this, but the city's political magistrate did not deem it appropriate to endorse it; nevertheless, those elected remained in office on November 3rd, supported by the majority of the confreres. In the meantime, the confreres held two general assemblies, on November 15, 1883, and June 15, 1884; however, the city's political magistrate, the captain of the district, according to civil law, warned them. For these reasons, on June 19, 1884, the city prefect wrote to the Bishop, and asked him whether it would be advisable, for the sake of public order, to suppress the aforementioned confraternity. The Bishop responded on July 2nd that it would be advisable, to the extent that...

[*Latin ed. p. 587*]

SPALATO. In the year 1887, the authorities considered the reasons presented by the royal authority, namely, disturbances instigated by the sodality, the election of officials contrary to the statutes, and the holding of assemblies without permission; to which it must be added that such a sodality, day by day, deviates from its proper purpose, and becomes turbulent, rather than fostering sentiments of piety and charity. With these considerations in mind, the magistrate of Spalato, at the request of the Lieutenant of Zadar, obtained the dissolution of the sodality, which was confirmed by a decree on August 8, 1884. And in that decree, among other things, it was also decided that the assets of the suppressed sodality should pass to the parish church. However, a truly singular event occurred at that time. Indeed, on the very same year, on July 24, some confreres from the Holy Cross presented their statutes to the Lieutenant, in accordance with the laws of the civil government, in order to have them confirmed by the political authority, and to have the sodality recognized. And it happened that on the very same day, August 8, on which the suppression of the sodality of the Holy Cross was decreed, the Lieutenant approved the statutes for

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the recognition of the sodality of the Holy Cross. Hence, great confusion arose. For the Ordinary maintained that the ancient sodality of the Holy Cross, with its rights and privileges, had been suppressed by force of the prior decree of the Lieutenant; but by force of another decree, by which the statutes were approved, he considered that a new, and entirely secular, sodality of the Holy Cross had been established, and indeed, although the approved statutes, although substantially similar to the ancient ones, differed in some respects, especially in form. But the Metropolitan of Zadar, and the sodality, at least for the most part, and indeed the political authority, seem to have intended something different, as will be evident from what follows. Meanwhile, the history proceeds. The members of the Holy Cross, immediately upon being informed of the decree of suppression, appealed to the Ministry for internal affairs of the state; this is evident from letters of September 24 and December 27, 1884, from the Bishop himself, in which the civil magistrate of Trapani warned the Bishop that the decree of the Lieutenant, and among other things, the transfer of the assets of the sodality to the church, should remain suspended pending the outcome of such an appeal.

[*Latin ed. p. 588*]

588 SPLATEN. However, the Bishop, firmly adhering to the opinion that the ancient ecclesiastical sodality of the Holy Cross had been suppressed, and that those who came under that name, being a new society with new statutes and not approved by the Ordinary, was not a true ecclesiastical society, and had no valid claim within the church of the Holy Cross, forbade this sodality from being admitted as a moral body within the place of the ancient confraternity: the members, on the contrary, presumed otherwise: hence, many and grave scandals arose, which cannot be deplored enough. Let us recall the tumult barely suppressed by the sodality upon the arrival of the new parish priest, let us speak of the events at Chammes, where the parish priest, from his own place, was forcibly removed, and the members restored their place against the will of the parish priest; and let us recall, finally, that when, in December 1884, a certain member, Catarina Covacich, died, the confratres, wearing their sac, and wishing to accompany her with a banner, the parish priest refrained from intervention, and the funeral was carried out solely by the confraternity, without the presence of a priest. This, indeed, happened again and again in similar circumstances, to the astonishment and sorrow of all good people. The Bishop also recalls that he had to abstain from the blessing of the cemetery on the day of commemoration of all the faithful departed, lest he appear to be supporting this sodality in its procession. Meanwhile, while ecclesiastical authority, with such firmness, was contending against the sodality of the Holy Cross, it was decided to establish a new confraternity in the parish church of the Holy Cross. This was done on January 5, 1885. The new sodality took the

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name of the Most Holy Cross, and its statutes were immediately approved by the Bishop and by the civil authorities, and many of the members of the Holy Cross, perhaps those who had disagreed with the majority, joined this new sodality. But when the old confratres of the Holy Cross perceived that this was done, as they believed, out of envy, greater dissensions arose. Therefore, the Bishop requested the civil authorities to restrain the sodality, which he called a lay organization, from its activities. And the Lieutenant of Zadar, with a new decree dated March 5, 1885, ordered the sodality of the Holy Cross, existing at that time, to be dissolved, according to...

[*Latin ed. p. 589*]

SPALATO. In the year 1884, on July 27th, the aforementioned decree was again suppressed, and its assets were once again attached to the parish church. The association itself again appealed to the Ministry of Internal Affairs of the State; but this appeal was rejected, and it brought the matter before the highest court of the Empire, which, on January 19th, 1887, issued a formal judgment, ordering that, with the decree of the vicariate and the rescript of the Ministry of State annulled, the association be restored to its former state. However, as soon as the Bishop became aware of the matter, rather than restoring the association within the ecclesiastical forum, he subjected it to even stricter and more explicit restrictions; indeed, on February 20th, 1887, and again on May 24th, 1887, he sent letters to the parish priest of S. Croce, in which he stated that he could in no way admit the association, notwithstanding the civil authority which had allowed the appeal, to perform any ecclesiastical functions in that church; and this all the more so because within that very parish church, with prior ecclesiastical and political authority, the Brotherhood of the Most Holy Cross already existed, and it would be superfluous for another association to exist there; while it is permissible for anyone to give the name of a new association to the Most Holy Cross. The members of the association then approached the Bishop and begged him to retract from the judgment he had issued; and finally, on June 9th, 1887, they appealed to the Metropolitan. The Metropolitan, after hearing the arguments in writing from the suffragan Bishop, on August 8th of the same year, 1887, delivered a judgment, which, after careful consideration, stated explicitly: "The Metropolitan Forum, by its own authority, annuls the decrees of the vicariate of February 16th, 1884, and May 24th, 1887, and considers the Brotherhood of S. Croce in Spalato to still exist, and restores it to its former status." However, as soon as the Bishop received notice of this judgment, he appealed to the Holy See, and, in letters which are separately printed, and with supporting documents, he sought to defend himself and his actions. In turn, the Archbishop wrote a lengthy letter in support of the judgment. The president of the association, Mladinich, went to the Holy See and chose a particular advocate who would plead his case before the Sacred Congregation. Therefore, on August 11th, 1888, a decree

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was issued.

[*Latin ed. p. 590*]

590 SPALATO. In folio. Interim, Ordinario Spalatensi scriptum est, ut indicaret et proponeret, si qua viam compositionis et concordiae haberet. Defuncto Episcopo in hoc tempore, Vicarius capitularis respondit, quod ad concordiam id dumtaxat conducere posset, quod nempe utraque sodalitas, SSmi Crucifixi et S. Crucis, iterum conveniret, et moderatores utriusque sodalitatis munere suo se abdicarent, et novi praesidentes speciali aliqua ratione, praeter statuta, eligerentur. Concordia tamen, nescio qua causa, ad exitum non perducta est, unde decretum est, causam hac die proponi, licet Vicarius capitularis novis litteris exoravisse ut causae tractatio auferretur usque dum novus Episcopus crearetur, qui forte aut rem novo consilio componere, aut saltem per peculiarem patronum curiae episcopalis causam coram S. C. C. tueri posset, eo vel magis quod sibi, aiebat Vicarius, media id facendi deerant. Sacra Congregatio Concilii sub die 14 Decembris 1889 respondit: "Dilata et audiatur novus Episcopus." Verum novus Episcopus, datis litteris, exoravit S. Congregationem Concilii, ut quaestio haec dirimeretur antequam possessionem Sedis episcopalis caperet, ad vitandas plurium fratrum oppositorum hostilitates; idque eo plus quod nihil haberet addendum iam relatis.

Disceptatio Synoptica.

DEFENSIO SODALITII.

Patronus qui sodalitium sibi adlegit, in primis studet evincere, metropolitanam Curiam in edenda sententia, qua sodalitas in integrum restituebatur, suo iure usam fuisse, et potestate legitima haud caruisse. Siquidem iuxta tit. De sup. neg. prael. negligentia inferioris iudicis, ex qua ius tertii laeditur, corrigi ac suppleri a superiore iudice debet. Citasse ad rem sufficiat Barbosam De off. et pot. Ep. 13 alleg. 26 n. 10: « Ad eum, Archiepiscopum, ex capite praedictae negligentiae appellari poterit, proindeque ad eum causa devolvetur, sicque parti per negligentiam Episcopi laesae, iustitia per Archiepiscopum diligenter ministrabitur. » Concinit et Engel lib. 1 tit. 10 n. 4.

[*Latin ed. p. 591*]

SPALATO. 591. Furthermore, on November 23, 1884, the confreres requested the Bishop to settle the matter with the parish priest of St. Cross, and again on June 1, 1887, after the sentence of the imperial tribunal, they implored the Bishop to restore the original rights to the confraternity. When these requests of the confreres proved fruitless, they spontaneously initiated an appeal to the Metropolitan, justly and legitimately, because the Bishop had denied them justice. With this established, in another

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section of the petition, the petitioner presents arguments to support the sentence, namely that it is in conformity with law, equity, and the civil law in force in the Austrian jurisdiction, and that it is beneficial to the spiritual well-being of the faithful and to the advantage of the parish church. To demonstrate that the sentence is in accordance with the law, the petitioner states that the confraternity was canonically established in the parish church commonly called Borgo Grande of the city of Spalato, and that this is evident because the pious confraternity was founded in the year 1439, and its statutes, reformed in the year 1715, had already been approved by the Bishop of Spalato. With this established, to proceed with the legal process, it would have been necessary to issue three warnings, and then, if necessary, to institute a canonical investigation to ascertain the alleged crimes for which the confraternity was suppressed by legitimate authority. However, the Metropolitan states: in the suppression of the confraternity of St. Cross, the proper procedure prescribed by the sacred canons was lacking; no process was instituted, no legitimate cause was alleged, and no crime was proven. Moreover, actions contrary to the law must be considered as if they had never been done, according to regulation 64 of the regulations of law. This is all the more to be considered, since Innocent XI had granted several spiritual benefits to the confraternity, and therefore, in deference to the supreme authority, any reason, but a very serious and thoroughly proven one, was required to justify the lower authority in abolishing what the Prince had granted. Since, in this case, there was not a sufficient reason, the suppression of the confraternity was, of its own accord, illegitimate, and therefore, the just restitution that the Metropolitan sentence sanctioned was entirely appropriate.

[*Latin ed. p. 592*]

592 SPALATEN. The reasons alleged in the civil decree of suppression dated August 22, 1885, or 1884, have not been legitimate, but are entirely futile, and this can be seen at a glance and by simple reading. Furthermore, in the decree of the Lieutenant of Zadar, certain actions are cited as causes for the suppression, which, although they may seem of minor importance, could not provide a reasonable basis for the suppression. Moreover, the association has never deviated from its original constitution, and has introduced no innovations in its statutes. On the other hand, the parish priest has unjustly placed obstacles in the way of the members, preventing them from performing pious religious exercises, attending sacred functions, and administering their own affairs. However, even granting that the aforementioned actions, for which the association was suppressed, are serious, it is nonetheless entirely foreign to ecclesiastical justice to suppress the entire society because some members behaved badly and stirred up discord. These individuals, insofar as they have truly been guilty, should have been punished by canonical penalties by the Ordinary, but not the association,

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the majority of whose members, according to the Metropolitan, observed the statutes most religiously: for it is unjust to inflict damage on another because of the fault of another, since "an unjust condition should not be imposed upon one through another" / 74 ff. De reg. iuris. It must also be noted the spiritual good that the association proposes to itself; therefore, the suppression of the association, as an impediment to this good, is to be condemned, and conversely, the restoration, which the Metropolitan has sanctioned, is to be commended. Even more so, because the existence of the association is also beneficial to the parochial church, since the association, among other things, has also rendered due service to the greater honor of the Church, by attending sacred functions and processions. There is no doubt that the association will fulfill its purpose, since it has also imposed the same obligations upon itself in the recent statutes. Finally, the advocate maintains that the judgment is entirely in conformity with the judgment of the imperial tribunal, and with the civil law in force there.

[*Latin ed. p. 593*]

SPALATO. 593 In the concluding section, the defender stated that it was not in accordance with truth and justice that the ancient confraternity of the Holy Cross no longer existed in fact; since it had been suppressed by a decree of the Vicar General on August 8, 1884. However, in fact, it now exists, with all its rights, by virtue of the sentence of the Supreme Court of the Empire of January 19, 1887, which restored the confraternity to its original rights. Furthermore, he stated that it had always existed, and that when it appealed against the decree of suppression, it was known that an appeal binds the hands of the judge and suspends the execution of the sentence; for L. unie. ff. expressly states: "Nothing should be innovated in the meantime when an appeal has been interposed." This is consistent with cap. Dilectis §§ 55 De appell. He also noted that although the confraternity was violently ejected from the parish church, nevertheless, in order to show respect to the Bishop, it abstained from carrying out the pious works prescribed by its statutes. Indeed, it may be said that recent statutes require the approval of the Ordinary; provided that the recent statutes are not different from the ancient ones, but are the same, having been presented to the civil authority by the Bishop himself, so that they may acquire legal value according to the laws of the Empire. WHAT IS ALLEGED AGAINST THE CONFRATERNITY. On the other hand, it was noted that although disturbances and scandals, by which the confraternity is accused, are considered to be serious, they do not constitute a legitimate reason for the suppression of the confraternity, and indeed, that a greater number of reprehensible acts occurred subsequently to the civil suppression of the confraternity, and this alone is the reason; because, namely, the confraternity was prohibited from certain acts to which it believed it had a right, as it had previously considered it not rash to do so; nevertheless,

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it should also be understood that the dissensions and disturbances are not in themselves, but in their circumstances, and should be measured by the actual circumstances of the place. In fact, it appears that the confraternity had become an instrument of one of the political factions of Spalato, and could not be corrected, because the majority oppressed the minority, Acta, Tom. XXII. fase. CCLXIL 38.

[*Latin ed. p. 594*]

594 SPALATEN. The parish priest, the rector of the church, and the municipal council were daily embroiled in new schemes of discord. Consequently, since the association seemed to have strayed from its original purpose of fostering mutual charity, and appeared no longer able to return to its intended end, but rather to strive towards the opposite, it was deemed not undeservedly that it should be removed. Although the causes against confreres or confraternities, or their goods, pertain to the ecclesiastical judge according to the decrees of the Holy See on ecclesiastical immunity, which are found in Pignatelli, volume 2, section 47, number 7, and therefore, considering the matter in itself, the intervention of civil authority in this matter cannot but be condemned, especially since the civil magistrates, with their contradictions and opposing decrees, were the cause of greater confusion; nevertheless, it must also be considered that it was a dangerous, if not impossible, matter for the Bishop to dissolve the association, which seemed so turbulent, by his own authority and sole will; therefore, he deemed it necessary to use the assistance of secular power, which does not appear to be prohibited. Furthermore, these arguments should not be invoked to justify the suppression of the association. Since the members themselves seem to have gone beyond the bounds of ecclesiastical congregations, and through their actions and their own will, have returned to the ranks of lay societies. Indeed, 1. the majority of the members, rejecting the legitimate form of statutes, established certain individuals for the year 1874 who were elected in violation of the statutes, whom the Bishop, as is evident from his letters, did not approve, but nevertheless, the majority of the members did not heed the Bishop's will. It is known that it belongs to the Bishop to confirm, and therefore also to condemn, for a legitimate cause, the officials and ministers appointed by the association; this right flows from chapters 8 and 9 of session 22 concerning the reform of the Council of Trent, and has been repeatedly confirmed by the Holy See, as can be seen from Aliphana, May 8, 1706, Balneoregion, January 14, 1769, and others. Moreover, in the matter of a legitimate cause, it undoubtedly existed; indeed, it was the strict duty of the Ordinary to condemn the officials who, as if in rebellion...

[*Latin ed. p. 595*]

SPALATEN. On November 3, 1883, individuals were elected to govern

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the association, acting unjustly against those who had previously been legitimately appointed, and in violation of the established statutes of Karlova. Nevertheless, these individuals, supported by a majority of the members, persisted in their office, and furthermore, on July 24, 1884, they presented new statutes to the civil authorities for approval. These new statutes, both in form and in substance, differed from those previously recognized by ecclesiastical authority, particularly in matters such as the procedures for electing officials. However, these new statutes were approved and corrected by the Locumtenens of Zadar on August 8 of the same year, 1884, and thus became the governing rules of the association. Furthermore, when a portion of the members of an association creates its own leaders arbitrarily and in opposition to the old statutes, rejects the old statutes of the association, and establishes and adopts new ones for itself, it appears to have coalesced into a new body, distinct from the old one, and endowed with its own rights, even if it retains the old name. In this regard, the late Bishop of Spai aten, not without reason, considered the current association to be different from the ancient one, and entirely secular, since it was recognized only by civil authority. Indeed, according to the decree of Clement VIII, associations are to be considered ecclesiastical, and are to be allowed to wear the habit and participate in sacred functions, if they are established with the consent of the Ordinary, from whom their statutes must also be examined and approved. And it might be said that the Bishop should have, at the very least, recognized and approved the association of the Holy Cross with its new statutes, in order to avoid greater evils, since the new statutes were not very different from the old ones. However, several factors stood in the way of this. Firstly, the association consisted of individuals who, for the sake of civil factions, opposed the parish priest, the churchwardens of the Church of the Holy Cross, and many other prominent members of the parish; thus, there was a risk that introducing this body into the church would create further divisions. Furthermore, 2. shortly thereafter, namely on January 5,

[*Latin ed. p. 596*]

596 SPALATO. In the year 1885, a new confraternity was established with the consent of the Bishop in the church of the Holy Cross. Furthermore, from the cited constitutions, it is prescribed that only one confraternity of the same institute and kind may be established and gathered in churches, whether of secular or regular institutions. Having considered these matters, and also other considerations contained in the letter of the late Bishop of Spalato, which are to be distributed separately, the Most Reverend Fathers were asked to define the following doubt: Whether the opinion of the metropolitan curia should be upheld or overturned in the case of Zadar.

RESOLUTION. After deliberation, the Holy Congregation decided on January 25, 1890, to respond: The opinion should be overturned, and fur-

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thermore.

FROM WHICH THESE CONCLUSIONS ARE DERIVED:

I. It is not undeservedly that a Bishop should remove or suppress a sodality, whose purpose, which is, for the most part, mutual charity and piety towards God, appears to have failed.

II. Sodalities which wish to enjoy a legitimate life must strictly adhere to their own statutes, as guiding norms, and be subject to the Bishop; to whom it pertains to approve the statutes, to confirm or reject the officials elected by the members of the sodality.

III. All of these things have clearly failed, for the sodality had become a source of discord, rather than a center of mutual charity; a rebellion against the authority of the Bishop, rather than an example of submission to that authority; from which sodalities derive their legitimate existence.

[*Latin ed. p. 597*]

597. SALERNO. DELEGATE APPOINTMENT FOR THE SEMINARY. January 25, 1890. Session 23, Chapter 18, Concerning Reforms. Due to the death of the parish priest, Joseph Grimaldi, who was appointed to the temporary administration of the Salerno seminary, and after summoning all the clergy residing in the city, forty-seven priests convened on August 27, 1887, for the election of a new delegate. However, the proceedings did not proceed peacefully; indeed, while some of the canons were present, a certain priest named Filippone issued a protest against this action. Nevertheless, with the Pro-Vicar General presiding, the vote was completed; from which it was determined that the priest Francis had received seventeen votes, the parish priest Francis of Salerno had received sixteen votes, and the remaining six votes were scattered among others. The president of the election then declared that, having been made with a relatively greater number of votes, the election of the priest Filippone was invalid; he even went so far as to question the legitimacy of the election itself, because the rural clergy of the diocese had not been summoned, nor were they present. However, the priest Filippone vehemently opposed this proposition, and even uttered certain insulting words directed at the episcopal curia, as the Ordinary reports. Hearing this, one of the electors, Canon Ricciardi, protested, stating that Filippone had openly demonstrated himself to be unworthy to be counted among the delegates of the seminary, and therefore, Francis of Salerno should be retained as the elected, since he had obtained, if not a greater, at least a healthier portion of the votes. With these additions, the election was suspended, and the Archbishop, informed of the entire situation, intervened. After considering the matter, the Archbishop immediately imposed a three-day suspension from divine office upon the priest Filippone, as punishment for the insults

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he had uttered. SUMMARY OF THE FACTS.

[*Latin ed. p. 598*]

598. The Salernitan Disputation, a synopsis, which favors Father Filippone. From what has been stated thus far, it is clear that there are two doubts which can be debated in this matter: firstly, whether and by whose favor the election is considered valid; and secondly, if the former is negative, whether the priest Filippone is still eligible. For the entire dispute is contained in these two points. Furthermore, the validity of the election of the priest Filippone is primarily supported by the fact that he was chosen by the majority. Let it not be objected that the majority was merely relative. Indeed, although, according to chapter *Quia propter de elect.*, absolute majority is required for the validity and effect of an election, nevertheless, those things prescribed in that chapter under penalty of nullity seem to be observed in the elections of prelates, whose death leaves the Church widowed; while in other, lesser elections, it suffices that the law of nature be observed. See De Luca, *De canon.*, disputation 28; Pitonius, *Discept.* eccl., 140, 56, 61; Reiffenstuel, L. 1, 16, n. 100. Indeed, it is not at all certain that the law of nature is violated in the case in which someone is elected to whom the relatively greater number of those voting gives their preference. And truly, there are not lacking authors who teach that, in such elections, only a relative plurality of votes is required. Cf. Zipaeus, *Analytica iur. Pont.*, I, 3, in the title "De his quae fiunt a maior." Indeed, in matters concerning patronage, we know that an election by a relatively greater number of votes is admitted. For Fagnanus states in the explanation of chapter *Quoniam* 3, *De iurepatr.*: "A presentation made by the majority of patrons with respect to a minority is valid, even if it is not made by the majority of all." Let it not be objected that the majority was not both greater and better. Indeed, although, according to what Fagnanus states in the notes to chapter *Quia propter*, in the scrutiny of elections, a comparison used to be made, not only of numbers to numbers, so that it might be known who was approved by the greater part of the chapter, but also of merits to merits, and of zeal to zeal, so that it might be known whether the greater part, sa-

[*Latin ed. p. 599*]

The Salernitan canon also used this practice, choosing the more worthy candidate; nevertheless, today this practice is obsolete, and the only consideration is the number, that is, the majority. Gonzalez, in chapter 58 of *Ecclesia vestra* on elections, citing Barbosa and Garcia; Giraldi, title 6 on elections, section 46, chapter "Qma propter"; Maschat, *Institutiones canonicæ*, book 1 on elections, number 13. And he gives the reason, as do other Doctors, such as Leurenius, *Forma ecclesiæ*, I, 3, title 9, question 130, with these words: "Indeed, the majority by number is considered

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also to be the healthier part, unless it is clearly apparent, or legitimately proven, that the majority by number has been corrupted, or that it has been influenced by some other evil motive." Therefore, today, a majority of votes is sufficient for a legitimate election. And indeed, this is the case, both because in the present day, elections are almost always held by secret ballots, so that the healthier part cannot easily be ascertained; and also because the exclusion and rejection of the majority in favor of the minority by scrutineers in the very act of the election is not only odious, but also difficult and a cause of great contention. This is confirmed by the very events that occurred in our case. For the priest Filippone, who was initially considered unworthy by all, appears from a recent document reported by the Ordinary himself to be quite different, and is, in all respects, perhaps being vindicated. Indeed, what was imputed to him was, in all respects, either trivial or, at best, minor. The trivial matters are those that are said about his character, and the danger to the seminary if one of the four candidates chosen were to be of a troubled nature and somewhat fiery temperament. As for the more serious matters, it is wrong to turn the blame on the electors and to invalidate the election because of a crime that occurred after the election. Indeed, if the priest Filippone was seen to be somewhat harsh in his criticism of the Curia, and to utter certain harsh words, he did wrong; but some allowance should be made for his offended spirit, because he saw that the election he believed was made in his favor was being challenged. Furthermore, if he sinned, he also humbly bore the punishment; and if he offended the diocesan authority in a fit of anger, he recently requested forgiveness in letters sent, and he...

[*Latin ed. p. 600*]

600. The SALERNITAN case was so thoroughly investigated that even the Archbishop, changing his opinion, soon commended the very person he had previously disapproved of. Therefore, all those arguments that are brought forward concerning the unworthiness of the priest Filippone, and the more sound judgment of the smaller part of the electors against the larger group, seem to lose their weight.

FROM WHAT ARGUMENTS FAVOR THE PAROCHIAL VICAR OF SALERNO. Conversely, one argument supports the parochial vicar of Salerno, namely, that the elected candidate is said to have been commended and requested by the saner part of the electors and by the Archbishop in his previous letters. Let the suffrage of many electors be in favor of the priest Filippone; for if a candidate has already been elected, even if he holds a perpetual office, he can nevertheless be justly removed from office, whenever he is of an imprudent nature, as the Sacred Congregation of the Council reminds us in the document *Tudertina Elect. deput. Sem. 15 Septemb. 1792 cum Zamboni f. 4 conclus, v. Semin. § 1*. It seems even more likely that one who has long demonstrated a mind of this

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kind should be prevented from undertaking this office. And therefore, for this reason, the election of the priest Filippone should be declared null and void, and the right should be upheld by the smaller group. However, how much weight should be given to all of these matters, will be determined by the prudent judgment of the Most Reverend Fathers.

But, on the contrary, it seems more true to declare any election invalid, and perhaps the election itself was null from the beginning. For, an election by a relative majority is admitted only in certain exceptional cases, such as in the case of patronage, when, especially, the electors, who are living in the place where they reside, send the name of the candidate to the Curia by ballots, or perhaps in other elections if it is clearly evident that the candidate was elected by the majority, but is unworthy, according to what is stated in chapter 40 of the Decretals, concerning elections, in the question concerning Layman, and in the question concerning the provision of churches, question 65. Furthermore, it seems essential for an election that an absolute majority of those present should agree on one candidate. Even more so, because if only a relative majority were to be considered valid, it could easily happen, due to the dispersion of votes, that someone would be elected by only two or three votes, which is absurd and leads to abuses.

[*Latin ed. p. 601*]

SALERNITANA 601, which is objectionable and, moreover, foreign to canonical jurisprudence. For nowhere are such precautions or admissions found in canonical law. Therefore, no one seems to have been elected in the disputed scrutiny of August 27, 1887, because no one obtained an absolute majority of votes. This conclusion is confirmed if the form and nature of the elections are examined. Indeed, more could be said regarding the lack of convocation of the rural, or, as they say, forensic, clergy, and regarding the presence of canons. For, according to what is stated by Corradus, *Prax. benef.*, book 4, title 4, chapter 8, number 28; Monacellus, *j9. 1 t. 12 form. 2 n. 2; Zamboni, *loc. cit.*, § 2, with *Tudertina* cited on September 15, 1792, the representatives of the seminary ought to be chosen in a diocesan synod in which the entire clergy is gathered, or, if the custom is to choose outside the synod, with the entire diocese legitimately convened. Nevertheless, either because the contempt of some of the electors vitiates the election to the extent that they are excluded from it, as is stated in chapter 28 on elections, with the Glossa, *Consentire*; Fagnan, in chapter *Quia propter De elect.*, number 38 and following; Piton, *De controv. patr. alleg.*, 70, number 8; or because, gradually, due to the difficulty of convening the entire clergy and holding a diocesan synod, a different discipline has arisen, it seems that the practice now in force is that the representatives of the seminary are chosen solely by the clergy of the city. Indeed, Barbosa, *collect. ad cap. 18 sess. 23 Conc. Trid.*, number 7, explicitly states this principle: "The election of representatives for the seminary suffices if it is done by the clergy of

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the city." Therefore, in this matter, the lack of the forensic clergy does not properly or intrinsically impede the legitimacy of the elections.

More serious, however, seems to be the fact that the canons were present. Indeed, *Tridentinum*, cited, chapter 18, session 23, warns that the Bishop should devote himself "with the counsel of two from the Chapter, one chosen by the Bishop, the other chosen by the Chapter itself; and also of two from the clergy of the city, of whom one should be chosen similarly by the Bishop, and the other by the clergy." From this, it seems that a distinction and separation of rights has been made between the Chapter and the clergy of the city, so that, consequently, the Chapter now nominates someone from among its own members.

[*Latin ed. p. 602*]

602 In Salernitano, aliter, reliquus clerus, exceptis canonicis, ex suo gremio deputatum suum eligat. Si enim in concilio cleri etiam canones cathedralis convenissent, ipsi duplici iure fruerentur; immo, quandoque, si canonici numero plures essent, ceteri vero de civitate pauci, contingere posset ut electio utriusque deputati in potestate capituli maneret: quod dispositioni Tridentini non consentaneum videretur. Demum, Sacra Congregatio Consilii in Aquanis, die 25 Ianuarii 1873, taxative definit: "Per assecutionem canonicatus in cathedrali, officium deputati a clero civitatis cessat." Atqui, si canonicus in hac re de clero civitatis non censetur esse ad effectum officii, a pari de clero civitatis non debet censeri ad effectum electionis. Non enim est distinctio in allegato capite. Et si sub nomine cleri non veniunt, immo canonici excludendi sunt, quando sermo est de officio deputati cleri nomine exercendo; eodem iure sub nomine cleri non veniunt, immo excludendi videntur canonici, quando de electione a clero facienda disseritur. Qua de causa, non solum ex defectu maioritatis absolutae suffragantium, sed etiam ex comitiorum vitio, electio iuxta modo dicta, nullius videtur valoris. Ceterum, quae in hoc puncto rite constabilienda sunt, pariterque in casu renovandae electionis, utrum sacerdos Filippone dignus necne passiva voce habendus sit, discretio et sapientia Reverendissimorum Patrum definient. Post ea enim quae tum in specie causae, tum in priori disputationis parte de hoc dicta sunt, aliquid de merito aut indignitate sacerdotis Filippone iterum addere supervacaneum videtur. Quibus praemissis, proposita sunt enucleanda sequentia:

I. An et cuius favore constet de electione in casu. Et quatenus negative.

II. An in nova electione sacerdos Filippone voce passiva privandus sit in casu.

RESOLUTIO: Sacra Congregatio Consilii, re discussa sub die 25 Ianuarii

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1890, censuit respondere: Negative ad utrumque.

[*Latin ed. p. 603*]

6. REGARDING THE SALERNITAN QUESTION, AND POINTS TO BE CONSIDERED. In the election of a representative for the seminary, to be carried out by the clergy of the city, the canons cannot be present, because, by reason of their canonical institution in the cathedral, they cease to be part of the city's clergy with regard to this right. II. The Council of Trent granted the canons a separate privilege of electing their own representative, distinct from the clergy of the city, who are able to elect another from their own ranks. III. Therefore, if an election were to be held by the canons, to the extent that the clergy of the city were to participate in that election, it would be considered contrary to the law for the canons to cast their votes in the election of the seminary's representative, which is to be carried out by the clergy.

(1) SAINT JAMES OF CUBA, REGARDING THE AGE OF THE CONFESSOR. On January 25, 1890. Session 24, chapter 8, Concerning Reforms. The Sacred Council of Trent, in session 24, chapter 8, decreed that "in all cathedral churches... a certain confessor... should be appointed by the Bishop, who should be a master, or doctor, or licentiate in theology, or canon law, and of forty years of age, or otherwise, whoever is more suitable for the needs of the place." The successors of the Most Holy Fathers have confirmed this most salutary institution, and especially Benedict XIII, who, in the constitution *Pastoralis Officii*, not only encouraged Bishops to establish confessors and theologians where they were not present, but also ordered that, in Italy and the adjacent islands, the election of both the confessor and the theologian should take place "in a formal assembly... in precisely the manner in which parochial benefices are conferred."

COMPENDIUM OF THE MATTER. (1) See *Recole*, Volume I, pages 657 and 691, where reference is made to the Appendix concerning the various types of representatives, and their counsel and office with regard to seminaries and Bishops. Volume XII, pages 492 and 497, where the matter is discussed of those who can elect and be elected, and of a certain custom that has begun to fall into disuse with regard to the electors of the representative, by the clergy of the city.

[*Latin ed. p. 604*]

604 St. JAMES OF CUBA. Concerning the status of the church of St. James of Cuba, a report was transmitted to the Sacred Congregation. Regarding chapter 9, concerning the postulancy, the Archbishop narrates and requests clarification on the following: "In these cathedrals of the ecclesiastical province of St. James of Cuba, there is a gathering for the provision of a Canon of the Penitentiary. The Bishop, with the Chapter, examines the candidates according to the prescribed form, and from those approved, he

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proposes three to the Royal Patron. This Patron then presents to the Ordinary whom he wishes from those proposed, or from others. The Ordinary, if he finds someone suitable, immediately institutes him, and gives the Chapter the mandate to admit him to possession. - Therefore, the aforementioned Archbishop asks: 1. Must the forty years be begun, or completed? 2. In the case that they must be completed, what is to be understood regarding the words of Trent concerning the time when the examination of the candidates takes place; or concerning the time when the proposal of three is made by the Archbishop and the Chapter; or concerning the time when the Ordinary institutes the presentation by the Royal Patron? 3. Can a candidate approved for presentation to the Royal Patron be proposed, who has not yet completed his fortieth year, provided that he completes them before the institution? 4. Can a Canon of the Penitentiary be instituted by the Ordinary, if he is within the arm of completing his fortieth year?"

Synopsis of the Discussion. It was noted that nowhere, whether in the archives or with the learned doctors, was there found any authentic declaration issued by the Sacred Congregation that defines the point of contention in its terms. Regarding the learned doctors, there is not a unanimous opinion. For Garcia, *De Beneficiis*, page 1, chapter 4, number 35; Barbosa, *De Officiis et Potestatibus Episcopi*, page 2, note 55, number 9, and others, state that "these forty years must be completed." Azorius, on the contrary, *Institutiones Morales*, page 2, book 6, chapter 5, question 6, at the end, with others of lesser note, believes that it is sufficient if they are begun. Ferraris, in *Canonicalia*, article 9, number 50, mentions both opinions, but...

[*Latin ed. p. 605*]

Saint James of Cuba abstains from offering any judgment whatsoever. Others simply propose the Tridentine law without any special explanation added. Therefore, having set aside the authority of the Doctors, it remains to be investigated whether anything certain regarding the age required for the confessional can be concluded from other arguments. Furthermore, in the first place, the well-known principle from Reg. 57 of the Jurisprudence in VI could be invoked, namely: "Against him who could have stated the law more clearly, a more favorable interpretation must be given." Since the legislator has not explicitly defined whether forty years begun are sufficient, or whether completed years are required, then, "in obscure cases, the minimum must be followed," according to another rule of law, Reg. 30 in VI and 9 ff. Be reg. tur. But even with these general principles, the matter seems to be more closely addressed by the axiom, namely, that "a year begun is considered as complete." If this principle were applied to the case in question, the dispute would be resolved completely, although it does not seem entirely certain whether this principle can be applied to the case. On the contrary, the very letter of the law seems to militate against

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it, for when it requires 40 years, it seems to require completed years rather than merely begun years. For we are said to be forty years old when those years have already been completed. The reason for the law also supports this. For, given the grave and important task of prudence and counsel that is the office of the confessor, a mature age is rightly required, which is more readily attained with completed forty years than with merely begun years. However, if one were to use the argument of analogy, it would be necessary to conclude that forty years begun are sufficient to attain the confessional. Two examples are most commonly cited for this analogy: one regarding the age required for sacred ordination, and the other for the election of Bishops. Regarding the first, when the Council of Trent, in Session 23, Chapter 12, prescribed that "<no one in the future should be admitted to the subdiaconate before the age of 22, to the diaconate before the age of 23, or to the priesthood before the age of 25>", it is commonly held, and still controversially held, that a year begun is considered as complete. Thus, in relation to the matter...

[*Latin ed. p. 606*]

S. James of Cuba, in his commentary on the Decretals, book 1, title II, De semper ordinandis, number 63, writes: "It suffices that this year be at least begun, even if it is begun only for half a day or a single hour... And this is evident from the practice of the Church, which has always understood the decree of Trent in this way." Furthermore, Barbosa, in his collection of commentaries on the Council of Trent, cited above, chapter 2, number 2, and Ferraris, volume Ordo, article 2, number 78, and throughout, all agree. Similarly, concerning the age required for the episcopate, the Council of Trent, in session 7, chapter 1, states that for "the governance of cathedral churches, no one shall be admitted unless... of mature age, of grave character, etc., according to the constitution of Alexander III, which begins Cum in cunctis..." The cited constitution prescribes, "that no one shall be chosen as a bishop unless he has already completed his thirtieth year." However, since the text in this matter says "has completed," it would seem that for the ordination of bishops, thirty years already completed, that is, already exact, are required. And indeed, Ferraris, book 1, chapter, number 79, states: "For the episcopate, 30 years completed... are required, according to the common opinion with Barbosa, session 7, chapter 1, number 5." But Barbosa, cited above, does not seem to hold this opinion, but rather the opposite. He writes in his collection, in the aforementioned place, that according to the text of the chapter, "No one can be promoted to the episcopate unless he has already completed the thirtieth year of his age, that is, has entered it; but according to the aforementioned constitution of Gregory XIV, which begins Onus apostolicum, it is held by Gutier and others whom he mentions that the year must be completed." Therefore, even in the stricter case, when the legislator has used the expression "no

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one shall be chosen... unless he has already completed his thirtieth year of age," it is not entirely certain that a completed year is required, but rather it is said that even a begun year suffices. Therefore, it could be reasoned thus: if, in the case of ordination and in the very election of a bishop, when the matter is of age, a begun year is considered as completed; then it does not seem reasonable that the same principle should not also be applied in the case of penance.

[*Latin ed. p. 607*]

Saint James of Cuba 607. For this difference cannot arise from the nobility and difficulty of the office; for the ministry of a Bishop and a priest is equally sacred and to be feared. Moreover, in the case of the penitential canon, a difference of a few months in age may not contribute much to science, prudence, or virtue. Nor can a difference be inferred from the sense and substantial difference of the words in the very text of the law; indeed, quite the contrary. Certainly, is someone ordered to be a penitential canon if he is forty years of age? But in the case of Holy Orders, no one is promoted before the age of twenty-two, or twenty-three, or twenty-five; and concerning the episcopate, no one is constituted a Bishop unless he has already reached his thirtieth year. Those expressions, or their substantial equivalents, do not seem to provide a sufficient reason to understand that, in one case, the year is merely begun, while in the other, it is completed; or that they are perhaps milder in the case of the penitential canon than in the other two cases. Indeed, if the intrinsic meaning of the words is considered in both cases, both in Holy Orders and in the election of Bishops, the precept is expressed in a negative, that is, prohibitive, form, namely: "No one shall be promoted before the age of..." or "No one shall be chosen unless he has reached the age of..." On the contrary, in the case of the penitential canon, the expression is positive, that is, conceived in this way: "Let someone of forty years of age be chosen." However, a precept expressed in a positive form seems less rigid and precise than one formulated in a negative and prohibitive form. Therefore, if it could legitimately be concluded in the case of Holy Orders, and perhaps even, at least according to some, in the election of Bishops, that the year begun is sufficient, and does not obstruct the prescription of the law, then, a fortiori, the year begun seems sufficient, and does not obstruct the law, in the case of the penitential canon, where the legislator has used a milder expression. This conclusion seems to be confirmed if the context of chapter 8 of session 24 is considered. For the Fathers of Trent, after saying that "a penitential canon shall be chosen who is a master or doctor... and of forty years of age," they immediately added: "or otherwise, whoever is more suitable for the quality of the place."

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Therefore, from -

[*Latin ed. p. 608*]

608 Saint James of Cuba clearly demonstrated that he did not absolutely insist on the conditions of a doctorate and an age of forty years. However, if the age of forty years is not absolutely required, and a younger age seems to be permitted by the Council of Trent, or even more so, there is no reason to insist that forty years must be completed. It would be illogical to argue that the Fathers of Trent understood "40 years," meaning completed, when they admit a younger age for this office. Therefore, even from the context of the law, a more lenient interpretation seems preferable. Furthermore, the authority of the Sacred Congregation of the Council supports this. For this Congregation has declared on more than one occasion that those who are under the age of forty years can be admitted to the office of confessor, provided that they are otherwise suitable for the needs of the place. Indeed, the most Reverend Pallotti, in his collection of decrees and resolutions of the Sacred Congregation of the Council, volume 4, chapter 7, page 315, reports the following concerning this matter: "In Liège, in July 1857, a question was raised – whether the provision regarding the office of confessor, incorporated with the canonry, remains in effect for those who are under the age of forty years, or whether those who have not completed the age of thirty-seven years are still eligible, and whether, as was the case nine years ago, they can be licensed in sacred theology, elected, and presented to the Bishop of Liège as being otherwise suitable, by the former Bishop of Vercelli, then Apostolic Nuncio in Liège, who was informed of the circumstances. The Sacred Congregation decided that the provision remains in effect, and that it does not contradict the decree of the Council of Trent, session 24, chapter 8, concerning reforms." "Therefore, the lack of forty years of age does not prevent the election of a confessor, if no one else more suitable for the needs of the place can be found in Hispalis, in the year 1585, in book 4 of decrees, page 95." "Furthermore, the Sacred Congregation, in Sarnen, on September 23, 1596, responded to a third question – that a person can be chosen by the Bishop even if they have not yet reached the age of forty, if no one else more suitable for the needs of the place can be found." "There is no doubt, therefore, that a confessor can be chosen who is under the age of forty, if no one else more suitable for the needs of the place can be found, in Volterra, on January 15, 1593. Also, in Crema, on November 12, 1644." "Furthermore, a confessor must be appointed, even if..."

[*Latin ed. p. 609*]

Saint James of Cuba, in the year 609, concerning a vacancy to be filled, and it is not sufficient that someone be designated as Penitentiary merely by virtue of being a member of the Arachidiaeon, but rather it must be

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entirely instituted: and although no one existed who was forty years of age and a doctor, nevertheless the Sacred Congregation judged that another could be chosen who was otherwise more suitable, in Volterra on January 15, 1593. "Indeed, the same Sacred Congregation also approved the election of a priest who was twenty-nine years of age, considering especially the necessity of the Church and the scarcity of priests in Grosseto on September 6, 1687. Indeed, in Pacen, it likewise approved the election of one who was only twenty-five years of age, for the same reasons, on September 6, 1687." "For the Council of Trent, in Session 25, Chapter 8, concerning reforms, decreed that the Penitentiary should be chosen from among those who are forty years of age, or otherwise who are found to be more suitable for the condition of the place. However, it is asserted that in the year 1622, Gregory XV instructed the Cathedrals of Spain that, if among those presenting themselves for the office of Penitentiary, someone should be present who, by the judgment of the Ordinary and the Chapter, clearly surpassed the other candidates in learning, and who had not yet reached the age of forty years, that person, notwithstanding the lack of this age, provided he was at least thirty years of age, could be chosen by the aforementioned Ordinary and Chapter." Indeed, the same esteemed author, cited in the aforementioned passage, reports that in Pacen, on September 6, 1687, a vacancy occurred for the office of Penitentiary in the Cathedral, and since, after several notices were posted, no one appeared except for a certain cleric, twenty-five years of age, a doctor of Sacred Theology, and a member of the College of Saint Mary of Jesus at the University of Hispalensis, who, in the competition for the office, was indeed found to be suitable and more apt for the condition of the place, and also the only candidate; the Sacred Congregation, notwithstanding the lack of five years of age required by the aforementioned Constitution of Gregory XV, judged that, provided the aforementioned circumstances were true, it could, by Apostolic Letters, remit the matter to the judgment of the same Bishop, so that, with the aforementioned candidate approved, he might graciously grant a dispensation regarding the age required for the office of Penitentiary. With these things stated, the Most Eminent and Reverend Fathers were asked to define two cases in which the aforementioned matters are contained, from the Acts proposed by the Archbishop, Volume XXII, page 262, number 39.

[*Latin ed. p. 610*]

610 Saint James of Cuba. Doubts. I. Whether the forty years required for obtaining the ecclesiastical mandate must be begun or completed in the case. And, concerning the first part, negatively; concerning the second, affirmatively. II. Whether the words of Trent (Trento) should be understood of the time in which the examination takes place, or of the time in which the three-year period is proposed by the Archbishop and chapter, or of the time in which the Ordinary, presented by the regional patron,

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institutes the case. RESOLUTION. The Holy Office, after discussion on January 25, 1890, decided to respond: To I, affirmatively concerning the first part, negatively concerning the second. To II, provision is made as in the first. FROM WHICH THESE ARE GATHERED. I. It suffices that the fortieth year has begun in order to obtain the ecclesiastical mandate; and it is not required that, in order to obtain said mandate, forty years have been completed or entirely fulfilled (1). II. The practice of the Roman Church has interpreted Trent, Session 23, chapter 12, concerning the age of those to be promoted to the sacred orders; so that it is sufficient that the years required for receiving each order have only been begun, even by half a day or a single hour. PARISIAN MARRIAGE. On January 25, 1890. Session 24, chapter 18, concerning reforms. On August 14, 1882, in the parish church of Saint-Germain-aux-errois in the city of Paris, Marcellus Guillet took as his wife Aemiliana Chedeville. But, A SUMMARY OF THE FACTS. (1) Recueil, Volume IX, 339; there it is spoken of the age of those admitted to the Seminary, so that they may be fed gratuitously. For those in Ulin, on June 10, 1876, it is declared that it suffices that the twelfth year, ordered by Trent, has begun, so that they may be received. Recueil also, Volume XIV, 382.

[*Latin ed. p. 611*]

PARIS. 6. In this place, a marriage, though begun with auspicious omens, proved to be unhappy. For, indeed, discord quickly arose between the spouses, and this caused disturbance in their domestic lives. To such an extent that, on January 31, 1884, the husband abandoned the home of his wife, where she resided, and returned to his own family, and he could not be persuaded to return to the marital union, although it is said that he was invited to do so on more than one occasion. Moreover, he no longer interfered in matters concerning his wife and her property, and this situation progressed to the point that he refused a certain subscription necessary for the management of her dowry. Consequently, Emiliana Chede and her mother were forced to petition for a civil divorce, which they obtained. With these matters settled before the civil authorities, the woman then approached the Holy See, requesting a dispensation from the marriage, which she declared to be valid. Upon receiving the mandate from the Holy See, the process was initiated with the Parisian Curia. First, the plaintiff testified under oath, stating that her husband had indeed attempted from the beginning, but had never been able to consummate the marriage; whether this was due to a defect of impotence, she dared not assert. She added that she had been treated harshly by her husband, and that she had experienced insults and abuse, and that for all these reasons, she would never be able to restore the marriage. The husband also testified that he had attempted to consummate the marriage for several days, but had never succeeded; he stated that the reason for this was that his

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wife, while not resisting, had done nothing to facilitate the matter. As for restoring the marital union with his wife, he stated that he was willing to do so, as far as his conscience allowed, but not out of love. Seven witnesses were presented by the wife, who appeared in court and testified to the best of their ability. However, Marcellus stated that he could not propose anyone, saying: "I have revealed nothing to anyone about the matter of the marriage, which is a source of great sorrow to me." Furthermore, several of Marcellus' relatives were requested to testify, but they excused themselves from appearing by letter. Therefore, the seventh witness for the husband was absent from the process. 1.

[*Latin ed. p. 612*]

612. PARIS. Interim, duo medici, Ferrand et Bucquoy, a iudice delegati ut inspectionem corporalem agerent, mulierem in domo salutis, post regulare balneum, coram moniali examinarunt. Prior autem scriptam attestationem confecit, quam dein coram iudice iuramento firmavit, quaeque ita explicit: "integritatem mulieris esse certam; ex quo deducere licet integrum esse hymenem, et actum matrimoniale non fuisse expletum." Alter vero pariter professus est: "status partium genitalium, signaque certae integritatis quoad hymenem, sinunt arguere numquam matrimonium fuisse consummatum." Disceptatio Synoptica: DEFENSIO MULIERIS. Porro, patronus, quem sibi elegit actrix, primum studet non consummationem matrimonii, eamque deducit tum ex confessione viri dicentis irritum fuisse quodlibet conatum; tum ex explicita affirmatione actricis et ex iurata et ingenua descriptione de inutilibus viri conatibus, quam actrix agit, cui de cetero eo maior fides adiungenda est, quo cautior apparet in affirmatione et iudicio factorum. Siquidem licet frustranea Marcelli conamina referat, ex quibus impotentia aliunde suadetur, tamen ab hoc asserendo ipsa abstinet. Porro, iuratam coniugum assertionem magni esse faciendam, docet cap. Laudabilem de frig. et male f., et ex ea sola, si coniuges sint fide digni, indulgeri posse matrimonii dispensationem, tradit Spondenus annal., eccles. a., 1599, S. C. C. in Frisia gen. a. 1817 et Gandaven. a. 1820 cum Clericato De sacr. matr. dec. 15 n. 36, Pyrro Corrado Prax. disp. I. 8 c. 7 n. 36 et Text. in cap. Mulier De iureiur. In themate autem coniuges, ac potissimum actricem, plenam mereri fidem, valide adstruitur ex septimae manus testimonio. Sane, parochus Legrand, proprius actricis, qui Vicarii generalis honore et officio honestatur, ait sese maximi existimare animi candorem mulieris Guillet, cum asserit suum matrimonium haud consummatum. Similia, ni...

[*Latin ed. p. 613*]

PARISIEN. 613. I shall say more, and others also have testimonies, the words of whom, for the sake of brevity, I omit here. However, the unanimous testimony of seven witnesses possesses great authority, as is clearly demonstrated by Concilii De sepultoribus, lib. 3, cap. 2, no. 138, and by

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Turrecremata in can. Requisitiorum, 2, cap. 33, q. 1, no. 4, which abundantly confirm this. Let the lack of witnesses on the part of the man not be an obstacle; for if the man has refused to present them, and those summoned by order have refused to appear, the lack of witnesses does not seem to be imputable to the woman. Furthermore, the Sacred Congregation has not infrequently proceeded to consider the granting of dispensation, even when the testimony of seven men was lacking, whenever it was established from other arguments that the marriage was unconsummated, as can be seen in Neapolitana, March 31, 1710; January 27, 1814; Parisien, March 28, 1857, and in six hundred other cases. Moreover, in this matter, in addition to what has already been presented regarding the unconsummation of the marriage and the integrity of the woman, there is the testimony of the midwife, Angelica Alliot, who, before the beginning of the cause, examined the body of Emilia, and who then, both before Emilia herself, and before "ius matri," and before the judge, declared that it was clear to her that the woman remained entirely a virgin. There is also the confession of the man, not only before the ecclesiastical judge, but also before a secular tribunal in a divorce case, about which there are more witnesses. But what is even more important, there is the judgment of experts, who, by order of the court, examined the body of Emilia, and who, as previously related in the details of this case, with one voice and without any hesitation, proclaimed that the woman was entirely intact, her hymen untouched, and that, whether from this or from other indications, which they fully describe, it is fully established that the actress was a virgin and that the marriage was unconsummated. Furthermore, Zacchia, Quaestiones med. leg., lib. 4, t. 2, q. 1, no. 1 and following, Teikmeyer, Institutiones med. leg., cap. 4, q. 3, and others, teach that the presence of the hymen indicates the existence of virginity and the unconsummation of marriage; indeed, the Sacred Congregation itself, in the instructions issued to it in the year 1840, affirms this. And although the existence of the hymen is not an infallible sign, nevertheless, "we have no infallible proofs in matters of nature," as Concilii De sepultoribus, I, 3, states.

[*Latin ed. p. 614*]

614. PARISIEN, c. 2, even public instruments, insofar as they can be false, and are sometimes proven to be false. But those things which are presented as legitimate proofs in law should be held to be true in judgment. This is in agreement with Fodere, who condemns those who "vacillate in a sterile uncertainty," rejecting "the most constant means that nature offers to enlighten us." Medie, leg. p. 2 c. 4 n. 987. Furthermore, experts, not only in their presence, but from the totality of the evidence, have affirmed the integrity of the woman; which is the supreme rule for establishing a certain judgment in this matter, as the aforementioned Doctors observe. Since this is so, and since, according to the common opinion of jurists, as stated

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by C. De Luca in *De iudiciis*, disp. 27 n. 20, and by C. Tuscus, *Disceptans*, c. 572 n. 48, experts are to be considered rather as judges than as witnesses in their own case, the advocate believes that there can be no doubt about the lack of consummation of the marriage. It is objected that the examination was directly performed by doctors. The advocate responds that the examination by midwives was prescribed for reasons of modesty; however, the doctors are the judges; and since today, judges often refuse to obey the assertions of women and to render judgment based on their accounts; hence, it has become customary in many places to have the direct examination performed by the doctors themselves; a custom which the Sacred Congregation has not disapproved, as is evident from Olinden, *matrimonii*, 1 September 1883 § Hoc sancta. (1) Furthermore, in order to establish grounds for a dispensation, the advocate primarily presents the probable impotence of the husband, which is supported by various factors, and first, from the fact of cohabitation for almost twenty-nine months, and repeated attempts at consummation without any effect; from which the husband's ineptitude is proven, as Pignatelli states, cons. 148 n. 14, t. 1, especially if it is established that the woman is, according to the judgment of doctors and midwives, well-formed and fit for marital intercourse. Furthermore, there is public notoriety, about which Joseph His and others have written more. (1) You have this question in Vol. XVI, page 215.

[*Latin ed. p. 615*]

PARIS. 615. The actress was induced. Indeed, the very fact of Marcellus, who confesses that he attempted consummation, but to no avail; the cause of which he attributes not to the woman's reluctance or ineptitude, but to a lack of sympathy; and furthermore, the proposal made by him from the very beginning to sleep separately from his wife; and finally, her repugnance to speaking and discussing matters pertaining to the consummation of marriage, a repugnance which the judge openly declared to him, "It is hateful to me to speak of this," clearly confirms that the man is entirely lacking in generative powers. Moreover, since the man's impotence is so probable that it almost seems certain, the dispensation from marriage is more properly and strictly a "prudential administration of justice," according to what is stated by Ursaya, *Dissertatio Eccles.*, vol. 3, p. 2, disp. 25, n. 104, and by De Luca, *Disceptatio Matrimonialis*, 9, n. 8. To this primary cause is added another, which is always present concomitantly in these conditions, namely, the estrangement of souls: for, frustrated by the man's weakness in the principal purpose of marriage, discord, animosity, and aversion always follow between the spouses; which, as the actress affirms, were not lacking in this case with the entire household. Indeed, the man himself does not deny it. Furthermore, there is no hope of reconciliation, as is evident from the actress's absolute response, who desires other marriages, but with a virile man, and who consistently refused to return to

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the embrace of the inept man, both in the present circumstances and from the beginning, even when compelled by her mother. Moreover, there is the consent of both parties; and, where this is present, "the Pope can grant this dispensation with absolute power, even without any cause," as stated by Cosci, I, c. 1, 3, n. 95, c. 2. Finally, it is also advisable to provide a salutary remedy, which is available in the Church, to protect the young and flourishing woman from the dangers of incontinence and perversion, especially in these times, so that it may be provided promptly and opportunely, rather than belatedly and after scandals, as stated by C. Cosci, L, c., n. 107.

[*Latin ed. p. 616*]

616. PARISIEN. OBSERVATIONS OF THE DEFENDER OF THE SACRAMENT OF MATRIMONY. On the other hand, the defender of the bond first points out that, according to the testimony of both spouses and confirmed by the seventh witness, the marriage began by mutual consent, as has been ascertained. Furthermore, the new spouses used the marriage bed for twenty-nine months. And the peace and harmony that flourished at the beginning were disturbed only by questions of money, and for this very reason, the final outbreak of arguments occurred, leading to the separation, as the witnesses testify. Therefore, according to the defender, this separation occurred either for this one reason, or for another reason proposed by the actress herself, namely, that she was not lovable enough, and certainly not, as the opposing party contends, due to a lack of potency or consummation. Indeed, this is not even fully proven. For, in the first place, the woman's testimony is not uniformly consistent, because while she admits somewhere that she did not know what was happening while engaged in marital relations, at the same time, elsewhere she affirms: "Certainly, I declare, without any doubt, that the marriage was not consummated." And although the husband consents and admits the lack of consummation, this, nevertheless, does not prove anything. Indeed, when both spouses agree on the same goal of dissolving the marriage, there is reason to suspect collusion, as elementary prudence dictates, and as Sánchez in *De Matr.* I, 2, disp. 45, n. 33, Menochius in *De art. iudic.* I, 2, cen. 2, eas. 103, n. 8, and Schmalzgrueber in *ad tit. 15* I, 4, n. 69, confirm. Moreover, the testimony given by the parties is of little value, for when there is a great deal at stake in the case, the perjury of the parties is to be feared, as chapter 24 of *De iureiur.* teaches. Nor does it matter that the testimony of the parties is confirmed by the seventh witness. For the seventh witness was brought in by the actress herself, and therefore it is not surprising that her testimony is biased. Furthermore, the testimony of the husband's seventh witness is lacking, which should also have been heard, according to the *Inst. S. C. C.* of the year 1840, and according to Sánchez's teaching in *De Matr.*, book 7, disp. 108. Furthermore, it is lamented that the mother of Marcellus, cited and questioned, was not heard, although she is often brought in by the

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opposing party to speak about the ineptitude of her son.

[*Latin ed. p. 617*]

PARISIAN. 617, fully aware and instructed concerning the marriage, laments that the examination of Monsieur Dommage was omitted, who, according to the assertions of Peter His, was one of those who had prevented the marriage of his daughter with Marcello Guillet, which had already been agreed upon. This omission appears to be more serious if one considers that, as cited in the passage, in the year 1840, it was ordered: "If, besides the seventh witness of each party, the defender of the marriage, being instructed in the matter, discovers others who have already completed certain actions, he must also summon these to be examined." It is also not superfluous to cite witnesses from the plaintiff's side, since these confirm the plaintiff's testimony and admit the impossibility [of consummation]. Indeed, as the defender observes, citing Sánchez I. c. lib. 7 n. 109, the seventh witness of each party should always be present, and especially in the case when both spouses confess an impediment, so that the truth may be fully revealed, and any collusion, if there is any, may appear. Therefore, the defender concludes that one should not place too much trust in the testimony of witnesses from the woman's side, as they are too one-sided; moreover, the parties on the plaintiff's side appear to be entirely favorable, so much so that they almost present Marcello's impotence as a certainty, while the plaintiff herself has not dared to assert this. Nor can one rely on the civil records of divorce, to which both the plaintiff and her witnesses frequently refer, since these have not been presented to the Sacred Congregation for examination. Finally, it does not seem prudent to place complete trust in the expert medical examination. The defender believes it is superfluous for the midwife, who examined the woman's body before the beginning of the cause and with her consent, to speak. Regarding the doctors, he first notes, citing Zachia Quaest. med. leg. Dec. 32 n. 26, that it is improper for men to be delegated to examine the female pudenda. He observes that a *bain de pureté* [bath of purity] was administered beforehand, under which term he believes is meant cold water, contrary to the law of the Sacred Congregation, which requires warm water in order to detect any deceptions that may be present in the woman's body. He recalls that it is prescribed that each expert should examine the woman separately and immediately give a written opinion before...

[*Latin ed. p. 618*]

618. PARISIANS. Let the judge be approached. But in this matter, both physicians performed all these things simultaneously; just as, subsequently, both seem to have been questioned by the judge. It is noted that the physicians, above all others, paid attention to the integrity

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of the hymen, and therefore, principally, formed their judgment regarding virginity and the lack of consummation of marriage. However, it is well known from Zacchia, L, c. I, n. 4, title 2, question 1, n. 28; from Mahon, *Medicina*, law of Milan, 1804, volume 1, page 102; and especially from Peter Budin, *Obstetrics*, Paris, 1866, that a woman can, even with an existing hymen, conceive, and therefore, one cannot safely conclude virginity solely from the existence of the hymen. Furthermore, when there is no certainty of the lack of consummation, it is useless for the defender to speak of the reasons for a dispensation, nor can a dispensation be granted in any way, he concludes. With these things stated and considered, the purpose was to examine the following question: Whether it is necessary to consult with the Holy Office regarding a dispensation from a valid but unconsummated marriage in this case.

RESOLUTION. The Sacred Office, after discussing the matter on January 25th, decided to respond: Affirmative.

SECRET REPORT ON THE MATTER OF MARRIAGE. January 25, 1890. Session 24, Chapter 1, concerning the Reform of Marriage.

Stephen Montskò, who had exceeded his fifth decade of life, on July 11, 1887, in the parish church of Leutschovia, entered into a legitimate marriage, with prior apostolic dispensation, with Maria Répàssy, a girl of four years of age, who was a consanguineous relative to him. From then until the end of October, or perhaps until mid-November, for there is disagreement in this matter regarding the deposition of the spouses, the following is a summary of the facts.

[*Latin ed. p. 619*]

SCEPUSIEN. 619. The wife cohabited with her husband: but from the beginning, both slept in separate rooms; then, indeed, they were together in the same room and bed; nevertheless, the husband said, "My wife, having put on her evening clothes, stayed awake until I fell asleep; but in the morning, when I awoke from sleep, my wife was already outside the room." And thus, the husband frustrated his own desire. Mary, however, does not deny this, but admits it entirely. At the end of October or November, the woman returned to her parents' home, so that she might be cared for more comfortably among her parents, due to a certain infirmity; and the husband, who was still not fully alienated from his wife, went there daily and dined with her. However, he affirms that he tried in vain to stay with her and that he demanded the fulfillment of her conjugal duties from her. Therefore, he finally went to her father. But Mary, the following day, rebuked him more sharply about this matter. Consequently, the husband, already disgusted, and further incensed by this matter, informed his wife that he would demand a separation, and, without delaying, on the very day, which was December 1st, he left the woman and went to the episcopal court for this purpose. Thus, the husband states the matter. Furthermore, the

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Bishop indeed endeavored and exerted every effort to reconcile the couple and to restore mutual charity and the duties of justice between them. "But," said the Prelate, "with the greatest sorrow of my heart, I must confess that all the efforts undertaken for the aforementioned purpose have, until now, been entirely without effect, so that no hope shines for me that the spouses will ever reconcile their minds or be induced to live together peacefully." Indeed, "Stephen Montskò... declared that he would rather endure the most extreme things than to allow his wife to return to his home." Moreover, it is the case that "Stephen is the last scion of a noble Catholic family and the only son of his parents; and his parents and other relatives hold it very dear that the family and name, and the character of nobility, should not be extinguished and cease." And furthermore, it is to be feared "that the young man, abandoning the Religion, which..."

[*Latin ed. p. 620*]

620 ZIPS. While he embraces and maintains this [Catholic] position with all his heart, [he] becomes a heretic, denied [the] dispensation [from marriage] by chance, and seeks permission to enter into new marriages outside the ranks of the children of God, to the manifest shipwreck of his soul, and with the triumph of the enemies of the Church rejoicing at such an acquisition. Hence, the Bishop, having related these and other things, on July 1, 1889, under the name of Stephen, earnestly requested a dispensation from marriage, affirming that the marriage had only remained valid. With these circumstances in place, the Most Holy [See] ordered the same Bishop to conduct the process according to canonical form. Carrying out these instructions, the Ordinary of Zips established a tribunal and completed all the acts of the process in approximately two weeks. Stephen and Mary were the first to be questioned, and they recounted what I have stated above. Seven witnesses from each side followed, who, with entirely favorable testimony, supported their respective parties both in terms of honesty and in terms of the lack of consummation. Finally, the examination of the woman's body took place; which was carried out by two midwives before an honorable matron, according to the prescriptions of the law. Furthermore, both the midwives and two doctors, having heard the accounts from the midwives, unanimously judged that Mary still possessed her full integrity, and therefore, the marriage had not been consummated. After these things, as the Bishop sent all the acts to the Sacred Congregation of the Council, he again presented the case of Stephen and earnestly recommended his prayers.

A Synopsis of the Discussion: Stephen chose a defender who, in his legal argument, observed the following: From chapter "Laudablem de frig. et male f." we know that, "if, however, both betrothed declare, with the seventh hand of relatives or neighbors of good reputation, and if relatives are lacking, that, having sworn according to the Holy Gospels, they have never

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been united in carnal copulation: then it seems that the woman is capable of entering into a second marriage." This is consistent with the letters from [the] Congregation of the Council in Burdigala.

DEFENSE OF THE MAN.

[*Latin ed. p. 621*]

SCEPUSIEN. 624, dispensation from marriage, February 26, 1825. Both spouses, under oath, declare that no marital relations have taken place between them. For this reason, moral certainty regarding the lack of consummation seems to be derived from this very fact. The husband, after recounting the circumstances of the case, concludes as follows: "Based on the aforementioned facts, I declare that the marriage has not been consummated." The wife, with the same circumstances and events presented, and especially noting her resistance to fulfilling her conjugal duty and her steadfastness in her purpose, states explicitly: "Therefore, based on what has been said, I solemnly declare that my marriage to Stephen Montskò has never been consummated through carnal intercourse." It is not relevant that in one circumstance, the husband's testimony contradicts the wife's testimony; for he stated that his wife returned to her parents' home at the end of October; whereas she asserted that this occurred after mid-November. Since the discrepancy concerns accidental details, and as such, does not harm the case, as De Luca, *Be testam*, book 5, chapter 10, states. Furthermore, the husband, questioned and examined by the judge on this matter, responded: "Considering the circumstance that his wife was staying with her parents, and that several people were present with her, discussing the matter of this marriage, they could more easily ascertain the time of the separation; with regard to the aforementioned declarations made by the wife, I accept them on my part... I did not do so in bad faith, nor with a perverse will, as noted in the record of my statements; but exclusively and solely because I do not precisely remember." Therefore, this discrepancy in the testimonies seems rather to demonstrate the absence of any collusion between the spouses, than to cause harm. Furthermore, the witnesses, under oath, praise the piety and honesty of both spouses, affirming that they fully believe in their statements and that such belief should be held. Indeed, some of them, and especially the parish priest, were already aware of the wife's reluctance to engage in carnal relations with her husband.

[*Latin ed. p. 622*]

622. SCEPUSIEN. affirms. In matters not open to dispute, I refrain from quoting the words of individuals, lest the script be unduly lengthened, especially since another argument suffices to demonstrate the truth, namely, the opinion of experts. He presents the following from Barzellotti, *Questiones de Matrimonio*, lib. I, cap. 5, nos. 75, 76, 77; Duges, *Manual of

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Midwifery*, part II, section 2, article 3, para. i; and Sedillot, *Manual of Midwifery*, chapter 9, which state that the signs of virginity are exhibited by the presence of the hymen and other indications which cannot escape the eyes of experienced physicians and midwives. The advocate recalls that, in this case, both midwives selected by the court, and physicians, based on the midwives' testimony, affirmed, unanimously and without hesitation, either in written documents or before the judge, that the woman was still chaste and that the marriage had not been consummated. Furthermore, it is stated in writing that two judicial experts declared, "That D. Maria Montskò, born in Répàssy, has not been defiled, that is to say, has not had intercourse with a man, and therefore the marriage has not been consummated." Then, before the judge, one of them, Doctor Alexi, added: "The midwives proceeded according to the instructions we gave them. Maria Montskò, born in Répàssy, is a virgin. This is concluded from the integrity of the hymen. I conclude, with the greatest probability, that she is in the state of a virgin, from an anatomical examination." The other, Doctor Paudex, stated: "The midwives proceeded entirely according to the instructions: Maria Montskò, born in Répàssy, is still a virgin. This is concluded from the appearance of the genitals, and especially from the presence of the hymen." Furthermore, Maria Malz, one of the midwives, stated, "All the genital parts of Lady Maria Montskò, born in Répàssy, are intact, and I conclude with certainty that she has not yet had intercourse." Also, Emma Kracreveszki stated, "Lady Maria Montskò, born in Répàssy, is still a virgin, and has not yet had marital intercourse, because no signs of corruption can be seen in her... the hymen is perfectly intact." The advocate, about to present the reasons for the petition for dispensation, in the first...

[*Latin ed. p. 623*]

SCEPUSIEN. 623 observes that the marriage is not likely to be valid, 1. because, according to the testimony of Joseph Supkovi, the marriage began "not from mutual inclination, but through the urging of the mother of the bride," who desired that her daughter be given to a wealthy and equally noble Catholic; 2. because the bride was sometimes afflicted with delirium, her nerves were unstrung, and she suffered from weakness of the spine, so that she did not appear to be of sound mind, as her fiancé and the parish priest indicate, nor does she deny it; 3. finally, because it appears that the woman entered into the marriage through a substantial error: for she has consistently declared, both from the beginning and subsequently before the ecclesiastical judge, that she has not and does not intend to fulfill her conjugal duties, and that she has constantly rejected her husband; but this seems to be contrary to the good of the offspring and to undermine the essence of the marriage contract, and therefore carries with it the nullity of the bond. To this already weighty doubt regarding the validity of the marriage, the advocate adds reasons for a dispensation, namely, the im-

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possibility of reconciliation, of which both the Bishop in his letter to the Most Holy [See], and several witnesses, have testified; furthermore, the animosity and hatred between the two Catholic families, to the great detriment of the Christian cause; the danger of incontinence, especially on the part of the husband, who desires marriage and offspring, even to prevent the extinction of the family name; and finally, the danger of apostasy on the part of the husband, so that he might find, in Castro de Ordiales, what is forbidden in the Church of God, and he greatly desires this; all of which the Ordinary has described in detail in his letters, as was previously stated in the account of this case. However, these reasons may offer a legitimate cause for a dispensation, as the Sacred Congregation for the Causes of Saints teaches in January, on the 22nd of August, 1884, with Conscio I, 3 c., I, n. 390: therefore, the advocate hopes and, on behalf of his client, implores the grace of a dispensation.

OBSERVATIONS OF THE DEFENDER OF THE VALIDITY OF THE BOND.

On the other hand, the defender of the validity of the bond points out that, although Mary is guilty in the case, the actions of the husband... (The sentence is incomplete in the provided text).

[*Latin ed. p. 624*]

624 ZIPS. To acquiesce and to consent. He states: "Since the marital state cannot be resumed and continued with those who have been adulterous, the confession of the spouses must be uniform." Therefore, when there is a danger of collusion, a uniform confession from the spouses seems necessary. Even more so, when in a very serious situation, one contradicts the other. The husband asserted that his wife had been with him until the middle of October; the bride, however, stated to her parents that she had not returned until after the middle of November. Nor is the testimony of the "seventh witness" more reliable. Indeed, the "seventh witness" must swear not only concerning the religion and honesty of the spouses, but also whether he believes the assertions of the spouses to be true or likely, and whether they are consistent with what those same spouses have said "at a time when there was no suspicion." However, the witnesses in this case either state that they came to know of the lack of consummation after the separation of the spouses, that is, "just before Stephen Montskò petitioned the consistorial court of Zips in writing to dissolve his marriage," as stated by Celestinus Kompanik; "or that they discovered it at a time when they no longer lived together," as stated by Nicolaus Marezinfalva; that is, they discovered the lack of consummation at a suspicious time; or they confess that they received no information about the matter, or that they heard a vague rumor spread among the people after the separation of the spouses,

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as expressly stated by Andreas Roth and Stephanus Grallik. Therefore, the moral argument for the lack of consummation, which in these times one must be wary of trusting, seems to waver even within the witness himself. Thus, the cause would have no recourse except in the physical argument, derived from an expert examination. But he himself says that he resorts to this only secondarily and as an accessory to the matter, as if he did not have great confidence in it. And not without reason. For the bath, which must be prolonged for three quarters of an hour before the examination, so that any deceptions and substances used to feign consummation may fall out and be detected, was completely omitted, contrary to the instructions of the Sacred Congregation of the Council of 1840. Furthermore, the matron, to whom the inspection was entrusted, assisted her and...

[*Latin ed. p. 625*]

SCEPUSIEN. 625 To remain vigilant, and to be entirely free from any suspicion regarding matters that require careful consideration, was no different for Mary, the Mother of God, and for the mother of Stephen; and therefore, by the very nature of things, she was entirely suspect. Nor is this sufficient; for even if midwives, despite being in such unequal circumstances, have reported something, nevertheless they have reported things that do not entirely harmonize with the existence of integrity and virginity; in this matter, among other things, the defender points out that the breasts are said to be elastic, and the labia vulvae are said to be gaping; which, according to Zacchia, *Quaestiones Medico-Legales*, Book 4, Part 2, Question 2, paragraph 16, can be signs of corruption. Nor does it matter that the hymen is said to be intact; for even with an intact hymen, virginity may have been lost, and a woman may have carried a child, as testified by Barzellotti in his work, *Quaestiones de Medicina Legali*, Volume 1, Chapter 5, paragraph 32, along with Duges, Sedillot, and others in another case. Therefore, it is not undeservedly, indeed quite prudently, that one of the expert witnesses refused to explicitly state whether virginity was present; but he considered it better to respond: "With the greatest probability, I conclude, from an anatomical examination, that the state is virginal." Having observed these points of uncertainty, and since, according to what has been said, and with all certainty, there is no indication of consummation, the defender believes that it is safe to say that the conditions for obtaining a dispensation are not met; even more so because the causes, which are always required for granting this dispensation and resolving the marriage, not only for its validity, "but also for the value of such a dispensation," according to Milan, May 11, 1732, and Leuren, *Formularium Ecclesiasticum*, Book 4, Question 277, are entirely absent. Indeed, the principal cause that is presented, to which all the others are reduced, is that the wife refuses to fulfill her marital duties. Furthermore, although the wife's refusal provides the husband with a just cause for requesting a dispensation, nevertheless,

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it is required that: 1. there be absolutely no hope that the wife will change her mind; 2. that the husband, who appeals to the Holy See, has not failed to ensure that his wife has not performed her marital duties. But neither of these is verified in this case: not the first; for, as the husband himself states, he received letters from his wife's mother on the very day of the separation, in which it was stated that...

[*Latin ed. p. 626*]

626. SCEPUSIEN. The wife... states that she is now prepared for all things: "but he responded to her that he was praying for the dissolution of the marriage, and that this purpose would prevail." Indeed, the wife confesses that she asked him not to leave, lest he go away in anger; but he, in turn, declared to his wife that he wished to live a different life. But neither is proven; rather, the resistance and reluctance of the wife are more attributable to the fault of her husband and his family, than to the woman herself. For Mary states: "I had no reason to deny the marriage in general; perhaps from the beginning, only my inconsideration... later, I was almost hostile in spirit towards my husband; but this was solely because both he and his relatives showed a harsh and unyielding attitude towards me." These words of the woman are strongly confirmed by the witness, Coelestinus Kompanyik. And therefore, it seems that the cause invoked, the most powerful cause for a frustrated dispensation, is failing. Regarding the other reasons presented against her, and especially the doubt concerning the validity of the marriage, the defender responds that the sacrament cannot be declared null because of fear; for Mary repeatedly affirms that she entered into the marriage out of affection for Stephen. But neither is it the case due to a lack of sound mind, for this defect is more assumed than true; and from the fact that Mary suffered somewhat from nerves, it does not follow that she was not in love. Finally, the contract cannot be declared null due to error or a purpose contrary to the essence of marriage; for Mary herself confesses that she had no reason to deny the marriage carnally, but that from the beginning, it was due to inconsideration, and then, through her obstinacy and insolence, especially because she was being vexed by her husband. Regarding the impossibility of reconciliation, the defender notes that it exists primarily on the part of the husband; and therefore, the alleged reason is of no benefit to him, who is requesting the dispensation. The wife, for her part, does not absolutely exclude reconciliation, but merely stated that, "given these circumstances, she could not resume and continue the conjugal life." Indeed, if the witness Laczko and others are heard, the reconciliation is not absolutely impossible.

[*Latin ed. p. 627*]

The question is raised whether, even if there is no hope of reconcili-

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ation, and although it does not befit nor is it expedient to dissolve the marriage bonds, and the sacraments are dispensed in favor of the one who refuses the marriage bond and the sacraments solely out of obstinacy and stubbornness, the dispensation should be granted. However, the causes proposed, namely, the enmity and hatred between the two families, the danger of incontinence, scandal, and apostasy from the faith on the part of the husband, although true, since they depend only on the evil and stubborn disposition of Stephen, are to be attributed solely to his fault. For if he desires that the family name not be extinguished, there is already a remedy available, namely, that he return to his legitimate wife, and not seek to dissolve what is united before God. Having stated these things, the purpose was to clarify the following question: Whether consultation should be sought from the Holy Office regarding a dispensation from a valid but unconsummated marriage in this case.

RESOLUTION. The Sacred Office, after discussion on January 25, 1890, decided to respond: Affirmative.

FROM THE HOLY APOSTOLIC PENITENTIARY.

On August 6, 1860. The Holy Penitentiary never considered that, when a paterfamilias is dispensed from abstinence from meat on fasting days for a legitimate reason, his children are thereby placed under his authority; but it intended only to give a declaration, through instruction to confessors, that, with just reasons concurring and when requested out of true necessity, it can be permitted to them, if they cannot otherwise sustain themselves, to partake of the food granted to the paterfamilias, always with the obligation of not mixing permitted and prohibited foods; and regarding a single meal in the day for those who are bound to fast.

(1) (1) Although this declaration of the Holy Penitentiary, and other subsequent decrees, instructions, responses to questions, etc., from the Holy Congregation of the Inquisition, have reached us late, we publish them, since they seem to us to be of great importance.

[*Latin ed. p. 628*]

628 FROM THE SACRED CONGREGATION OF THE ROMAN AND UNIVERSAL INQUISITION: DECREE. Issued in the general congregation of the Sacred Roman and Universal Inquisition held on Friday, August 21, 1670, in the Apostolic Palace of Monte Quirinale, before His Most Holy Lord Clement, by the Divine Providence, Pope X, and the Most Eminent and Reverend Lords Cardinals throughout the Christian Republic, as General Inquisitors specially appointed by the Apostolic See. Since, through the Sacred Congregation of the Holy Office, through repeated instructions issued by the same in the years 1658 and 1665, and transmitted to the local Ordinaries, provision has been made that access to those who are still living

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with another spouse, or who are otherwise impeded from entering into a second marriage, should be completely excluded from those who are to be examined as witnesses to prove the freedom of the contracting parties for marriage; nevertheless, His Holiness has observed that several local Ordinaries, or their Vicars, and those appointed to receive the testimonies of witnesses, as well as parish priests and notaries, in certain cases either omit or do not observe the tenor of these instructions; and although sometimes they fully observe them, they do not question the witnesses about other impediments that might be present. Therefore, wishing to remedy these evils, after mature consideration with the Most Eminent and Reverend Lords Cardinals, General Inquisitors, His Holiness, by the present Decree, which shall endure forever, again commands all Vicars, or those appointed to examine witnesses to prove the freedom of the contracting parties for marriage, as well as parish priests, notaries, and all others concerned, under penalties, even severe corporal ones, at the discretion of the Sacred Congregation, to observe the following instruction with the utmost care. In order that the present Decree and Instruction may more easily come to the knowledge of all, it has been decreed that they be published by someone from the Holiness's messengers at the doors of the Basilica of the Prince of the Apostles, and of the Apostolic Chancery, and in the Campo de' Fiori in the City, and in the Palace of the Holy Office in the same City, and that copies thereof be left affixed there; and that thus published, all and each of those to whom they pertain shall be bound and obliged, two months from the day of publication in the City, as if each of them had been personally notified and informed.

[*Latin ed. p. 629*]

SACRED ROMAN CONGREGATION FOR THE INQUISITION 629. INSTRUCTION concerning the examination of those witnesses who are brought forward in cases of impediments to marriage, both in the Court of the Most Eminent and Reverend Lord Cardinal, Vicar of the City, and in other Courts of other Ordinaries. Firstly, the witness shall be warned of the gravity of the oath, especially in this matter, in which both Divine and Human Majesty are offended, due to the importance and gravity of the matter under consideration; and that the penalty of galleys and flogging awaits him who shall give false testimony. Secondly, he shall be questioned about his name, surname, country of origin, age, occupation, and place of residence. Thirdly, whether he is a citizen or a foreigner; and if a foreigner, for how long he has been in the place where the witness is giving testimony. Fourthly, whether he came to the examination voluntarily, or was summoned: if he says that he came voluntarily without being summoned by anyone, he shall be dismissed, because he is presumed to be lying. But if he says that he was summoned, he shall be questioned by whom, or by whom, where, when, how, before whom, and how many

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times he was summoned, and whether he knows of any impediment between those who wish to marry. Fifthly, he shall be questioned whether anything has been given to him, promised, remitted, or offered by those who wish to marry, or by another on their behalf, for giving this testimony. Sixthly, he shall be questioned whether he knows the persons who wish to marry, and for how long, in what place, on what occasion, and of what quality or condition they are. Seventhly, he shall be questioned whether those who wish to marry are citizens or foreigners: if he answers that they are foreigners, the license to marry shall be suspended until the Ordinary sends letters stating of their free status from the time they remained in their city or diocese. To prove the free status of those who wish to marry for the remainder of the time, that is, up to the time when they wish to marry, suitable witnesses shall be admitted who shall legitimately and conclusively testify to the free status of those who wish to marry, and shall give a sufficient reason for their knowledge, without being required to produce attestations from the Ordinaries of the places where those who wish to marry have resided. If, however, he answers that those who wish to marry are citizens: Eighthly, he shall be questioned under which parish they have hitherto resided, or are presently residing. Also, whether the witness knows that any of the aforementioned persons who wish to marry have at any time had a wife or husband, or have professed themselves in an approved religious order, or have entered any of the sacred orders, namely, subdiaconate or diaconate.

[*Latin ed. p. 630*]

630 The Sacred Roman Universal Inquisition, or the presbyterate, or whether he has some other impediment by which marriage cannot be contracted. If the witness answers that he has not had a wife, or a husband, or any other impediment, as above: Ninthly, he is questioned about the reason for his knowledge, and whether it is possible that someone else has a wife, or a husband, or another impediment, and that the witness himself is unaware. If he answers affirmatively, the process is suspended, unless it is clearly proven by other witnesses that he has not had a wife, or a husband, or any other impediment, etc. Tenthly, he is questioned about the reason for his knowledge, from which the judge can then determine whether the witness's testimony is to be believed. If he answers that, intending to marry, he had a wife or a husband, but they are deceased: Eleventhly, he is questioned about the place and time when they died, and how the witness knows that they were married, and are now deceased. And if he answers that they died in a certain hospital, or that he saw them buried in a certain church, or that they were buried by soldiers on the occasion of military service, permission to marry shall not be granted unless first a genuine testimony is received from the director of the hospital in which the aforementioned died, or from the director

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of the church in which their bodies were buried, or, if possible, from the commander of the cohort in which the aforementioned soldier was described. However, the Sacred Congregation does not intend to exclude other proofs that may be admitted according to common law, provided they are legitimate and sufficient. Twelfthly, he is questioned whether, after the death of the aforementioned spouse, anyone of those intending to marry has taken religious vows. If he answers negatively, Thirteenthly, he is questioned whether it is possible that anyone of them has taken religious vows, without the witness knowing it. If he answers affirmatively, the permission to marry is suspended until witnesses are produced by whom this is clearly denied. If, on the other hand, he answers negatively, Fourteenthly, he is questioned about the reason for his knowledge, so that the judge can judge whether permission should be granted or not. If the parties are vagrants, the process shall not proceed to permission to marry unless they prove, by the faith of their Ordinaries, that they are free, and that the proper form of the Council of Trent, in chapter Multi, Session 24, has been observed. The faith, and other documents that are produced by the parties, are not admitted unless they are sealed and legalized by the Ordinary Bishop, and recognized by at least two witnesses who have a known hand and seal, and it must be carefully considered that the faith, or testimonies, clearly and accurately identify the persons about whom they are speaking.

[*Latin ed. p. 631*]

63. I. The Sacred Congregation of the Inquisition decrees that, concerning witnesses in these matters, relatives should be accepted more readily than strangers, because they are presumed to be better informed, and citizens more readily than foreigners; nor should vagrants and soldiers be admitted, unless there is a valid reason and due deliberation. And the notary must accurately describe the person of the witness; if he knows the witness, he should use the phrase: "Known to me." If he does not know the witness, the witness shall not be examined unless accompanied by another person known to the notary, and who shall attest to the witness's given name and surname, as well as to the witness's suitability to give testimony. And such examinations must be conducted in the city by a specially appointed official notary, and outside the city by the Vicar of the Bishop, or by some other prominent and suitable person specially appointed by the Bishop; otherwise, the notary shall be punished at the discretion of the Sacred Congregation, and the Ordinary shall not permit the examinations to be upon the carried out. The Ordinaries shall instruct all and each of the parish priests in their dioceses not to make announcements concerning marriages to be contracted with foreigners in their churches, unless they have been informed by the Ordinary, or by his General Vicar, who shall first require a certified report that witnesses have been examined in their

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tribunal, who attest to the freedom of those wishing to contract the marriage, etc. Those who contravene this shall be severely punished. In the year from the Nativity of Our Lord 1670, in the eighth indiction, on the 30th day of the month of August, during the pontificate of His Holiness in Christ, Pope Clement, by Divine Providence the Tenth, in the first year, the aforementioned decree was affixed and published at the doors of the Basilica of the Prince of the Apostles, the Apostolic Chancery, and in the Campo de' Fiori in the city, and at the Palace of the Holy Office in the same city, by me, Peter Paul Desiderius, of the same Most Holy Lord Pope, and courier of the Sacred Inquisition.

DOUBTS raised concerning the meaning of the decree reported above.

Doubt I. (Latin version) In the fourth last paragraph of the aforementioned decree, it is said: "Seest thou that faith did cooperate with his works and by works faith was made perfect?" and other documents which are produced from the parties, shall not be admitted, unless they are provided with the seal and authorization of the Bishop.

In the last paragraph of the aforementioned decree, it is prescribed: "Seest thou that faith did cooperate with his works and by works faith was made perfect?" and other documents which are produced from the parties, shall not be admitted, unless they are provided with the seal and authorization of the Bishop.

[*Latin ed. p. 632*]

S. R. U. INQUISITIONIS 632 » Ordinaries, and it is recognized, at least » Ordinaries, and it is recognized, but » by witnesses, who have the mark » but by witnesses, who have the » of the hand, and the seal. » If they are not » mark of the hand, and the seal.» trustworthy, and the documents of the seal of the Ordoare not of the seal, and the signature of the Ordi- nary, but of the seal, and the signature of the Ordinary, but of the seal, and the signature of the parish priest, and such a signature, and such a seal, shall be of the parish priest of the Dio- cese, or of a foreign parish priest, or of a parish priest known to one or more officials of the Curia, such as the chancellor, or substitute, can be admitted? And if, in the negative, how is it to be determined whether the seal or signature is that of the parish priest? It is sufficient that the testimony of the father, or mother of the bride, or of others of his or her family? Or of hers? Doubt II. In the third last paragraph of the Decree, it is prescribed: « For witnesses » in this matter, more relatives » than outsiders are accepted, who are presumed to be better » informed. Under the word Relatives, can one understand the parents, although they are sometimes interested in the conclusion of the marriage, and therefore they present themselves, or they cause themselves to be indicated by the spouses themselves to attest to their freedom of status? And if the parents are lacking, and their place is taken by brothers or uncles, can these, whose interest is known or supposed, be heard as witnesses? In the third last

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paragraph of the Decree, it is prescribed: « For witnesses » in this matter, more relatives » than outsiders are accepted, because they are presumed » to be better informed. Under the name of relatives, can the parents be understood, although they sometimes appear to have an interest in the conclusion of the marriage, and therefore they present themselves, or they take care to have themselves indicated by the same spouses to give assurance of the freedom of their status? And if the parents are lacking, and brothers or uncles take their place, can these, whose interest is known or supposed, be heard as witnesses? Doubt III. In the aforementioned paragraph, about halfway through, it is added: « And the notary shall exactly describe the person of the witness. »

[*Latin ed. p. 633*]

633 S. R. U. INQUISITIONIS »If he knows them, he shall use » the phrase: "known to me"; » but if he does not know them, he » shall not accept the testimony, » unless it is accompanied by » another witness known to the » notary, and which attests » to the name and surname » of the witness. » It sometimes happens that in » a diocese there are several, » and distant places, and that » it is customary for the » spouses to send, or to bring » with them, two witnesses, » who are usually unknown » to the chancellor, and also » often unknown in the city » where the bishop resides; » and if no one is found » who knows them, in order » to avoid serious inconveniences » to the people, who would » waste time and money » uselessly if they had to » be sent back, and also » to avoid strong complaints » that would arise, their » testimonies may be accepted » based on the legal axiom: » "No one is presumed guilty, » unless proven?" » If he knows them, he shall use » the phrase: "known to me"; » but if he does not know them, » he shall not accept the testimony, » unless it is accompanied by » another witness known to the » notary, and which attests » to the name and surname » of the witness. » It sometimes happens that in » a diocese there are several, » and distant places, and that » it is customary for the » spouses to send, or to bring » with them, two witnesses, » who are usually unknown » to the chancellor and in » the city where the bishop » resides; and no one is » found who knows them; » to avoid serious inconveniences » to the people, who would » waste time and money » uselessly if they had to » be sent back; and to avoid » easy complaints that would » arise, their testimonies » may be accepted, based on » the legal axiom: "No one » is presumed guilty, unless » proven?"

Dubium IV.

Dubium IV.

It sometimes also happens that, » after the status free has » been completed, some » circumstance arises which » prevents the marriage from » taking place for one, two, » or three months, and then » they must repeat the » status free for those one, » two, or three months, » especially if it

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concerns » people of humble condition, » and who are not known » to the Curia, and who » are from different places?

Dubium V.

Dubium V.

When in many dioceses there are.

[*Latin ed. p. 634*]

634 The Sacred Congregation of the Inquisition has ruled that, in order that free status may be ascertained, depositions should be taken from men alone, as is stated in the aforementioned Decree, namely, in the section entitled "Concerning Witnesses," where it is written: "Therefore, witnesses may be heard; but women are excepted." Can women also be heard?

Doubt VI. It is not infrequently the case that a man, or a woman, having established their domicile in a place different from their place of origin, even for ten or more years, having left their homeland or another city or country, already being an adult. Will it suffice to prove the freedom of this person for the aforementioned ten or more years spent in the place of their last domicile, or is it also necessary, notwithstanding such a long absence from their homeland or their original country, to inquire into the free status of this man or woman in order to enter into marriage?

Doubt VII. Finally, in the penultimate paragraph of the aforementioned Decree, it is prescribed: "And in such examinations, either the Vicar of the Bishop, or some other distinguished and suitable person, specially appointed by the Bishop, must be present." Can the words "distinguished and suitable person" be understood to mean Vicars Foraneal with their registrars, even though these lack the power to interrogate, which is granted only to the Episcopal Registrar? And, if not, is it permissible to follow the contrary custom?

[*Latin ed. p. 635*]

S. R. I. (Sacra Romana Inquisitio) 635, Thursday, the 24th of February, 1847. In the general Congregation of the Holy Roman and Universal Inquisition, held in the Convent of Santa Maria sopra Minerva, before the Most Eminent and Reverend Cardinals, Most Holy and Universal Inquisitors, concerning the general suppression of heresy, after the aforementioned seven doubts had been proposed, the same Most Eminent and Reverend Cardinals responded to each one, as follows:

Regarding the first: Concerning the first part: Affirmative, provided that the legality is established by the Episcopal Curia in such a case. Concerning the second part: The same as in the first.

Regarding the second: Affirmative.

Regarding the third: The Instruction must be observed.

Regarding the fourth: Generally affirmative; however, in particular cases,

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the prudent judgment of the Bishop is to be followed.

Regarding the fifth: Affirmative.

Regarding the sixth: Concerning the first part: Negative. Concerning the second part: Affirmative.

Regarding the seventh: Concerning the first part: Affirmative; however, Vicars Forane shall transmit the proceedings to the Episcopal Curia, which is responsible for ascertaining the legal status of the person. Concerning the second part: The same as in the first.

So it is written: Angelus Argenti, Notary of the Holy Roman and Universal Inquisition.

DECREE: The following doubts were proposed to the Holy Roman and Universal Inquisition by certain Bishops of Gallia:

"In the Apostolic Letter 'S. R. I.' of the 25th of June, 1885, addressed to all Ordinaries within the Gallic territory, concerning the law of civil divorce, it is decreed: 'Considering the most serious circumstances, times, and places involved, it is permissible that those who hold positions as magistrates and lawyers who handle matrimonial cases in Gallia may not be obliged to relinquish their office,' with the following conditions added, the second of which is: 'Provided that they are of the same mind concerning both the validity and nullity of marriage, and concerning the consummation of the marriage, regarding which cases they are obliged to judge, so that they never pronounce a judgment that is contrary to divine or ecclesiastical law.'"

The question is: I. "Is it correct that the interpretation, which is widely disseminated in Gallia and also published in print, according to which a judge satisfies the aforementioned condition, who, although a certain marriage is valid before the Church, completely disregards that marriage and its constancy, and, applying civil law, pronounces that there is a place for divorce, in order to sever only the civil effects and the civil contract alone?"

[*Latin ed. p. 636*]

636 The Sacred Roman Universal Inquisition should consider this: are the terms used in the given sentence to be understood in their literal sense alone? Can a sentence using different terms be considered not to contradict divine or ecclesiastical law? II. "After the judge has declared the existence of a divorce, can the Syndic (in French, *le maire*), focusing solely on the civil effects and the civil contract, as explained above, declare a divorce, even though the marriage is valid before the Church?" III. "After a divorce has been declared, can the same Syndic legally unite a person to another in marriage, while the first party, whose marriage was valid before the Church, is still living?"

Friday, May 27, 1886, in the general congregation of the Sacred Roman

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and Universal Inquisition, before the Most Eminent and Reverend Cardinals, general inquisitors, after the aforementioned questions were proposed, and after the vote of the Consultors, the same Most Eminent and Reverend Cardinals ordered that a response be given. - Regarding the first, second, and third questions: Negatively. On the same day, a report on these matters was made to His Holiness, Pope Leo XIII; His Holiness approved and confirmed the resolutions of the Most Eminent Fathers.

Ios. MANCINI, Notary of the Sacred Roman and Universal Inquisition.

INSTRUCTION concerning mixed marriages, addressed to the Patriarchs, Archbishops, and Bishops of the Eastern Rites. Since the union of Christian spouses expresses the union between Christ and the Church, as the Apostle Paul warns: "This mystery is great; but I speak of Christ and of the Church" (1), it is clearly a most sacred marital bond by which they are united to each other. Since faith is the root and foundation of all sanctity, it is also evident that spouses, by their mutual union, should sanctify each other, and that, as in all other respects, so especially in faith, they should be united. Therefore, it is not surprising that, among the things that impede marriage, that which is properly called the impediment of mixed communion is also included. Indeed, since in certain regions of the East some difficulties have arisen concerning this matter, and have opened the way to many anxieties, Our Most Holy Lord Pope Leo XIII, inflamed by his zeal for the Eastern peoples, has ordered the Supreme Congregation of the Sacred Roman and Universal Inquisition to address these difficulties, and...

(1) Cf. Ephesians 5:32.

[*Latin ed. p. 637*]

THE HOLY SACRED ROMAN INQUISITION, in order to remove anxieties, prepared a suitable instruction. Obeying these commands, the Holy Congregation decided to establish the following:

1. The nature of this impediment, as all know, is that the marriage bond cannot be entered into between those who are baptized, when one of them is heretical or schismatic. However, marriages between Catholics and heretics, and vice versa, are indeed illicit, but nevertheless valid. Therefore, a great difference exists between the impediment of mixed communion or religion and the other, which is properly called the disparity of cult. The former applies among Christians; the second affects the marriages of Christians with the unbaptized, whether they are Jews or infidels of any sect, or even catechumens. Therefore, unions between persons of different cults are entirely null and void; mixed unions, however, are valid, but gravely illicit.

2. It is easily understood why marriages between Catholics and heretics have been entirely condemned and rejected, both by the ancient canons,

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as well as by the more recent decrees of Councils and Supreme Pontiffs. They are to be condemned because of the forbidden communion in divine matters, from which scandal arises; because of the grave danger of perversion to the Catholic spouse; and because of the perverse institution of such unions. Furthermore, such unions easily promote the most harmful "indifferentism" in matters of religion. But other pernicious consequences also arise from such unions, since harmony of mind, which is absolutely necessary between spouses, is scarcely, or not at all, found between Catholics and non-Catholics. "How," says St. Ambrose (1), "can charity exist where faith differs?" Hence, Zonaras rightly observes (2) that the matrimonial union between Catholics and non-Catholics is to be condemned even from this point of view, because things that do not have the nature to be mixed together should not be mixed: "For how can anyone suppose that those who live together in such a way that their minds are affected in opposite ways in matters pertaining to faith, can agree with each other in other things? And how can their feelings in matters of faith, which are the first and most important, be so incompatible, that they will communicate with each other with equal minds in the rest of their life together?"

3. Therefore, it is not surprising that the ancient Councils forbade Catholics from entering into marriage with heretics, just as with infidels, unless these embrace the orthodox faith. Thus, the Council of Laodicea (3), concerning heretics, prescribes: "It is not fitting for anyone to contract marriage with a heretic, or to give one's sons or daughters to a heretic; but rather to receive them, if they profess to become Christians."

(1) L. II, cap. 9 de Abra.

(2) In not. Ad Can. 14 Coae. Chale, apud Bevereg.

(3) Can. XXXI.

[*Latin ed. p. 638*]

S. R. U. INQUISITIONIS §38. This is in accordance with the Council of Agde (1): "Because it is not necessary for him to give marriage and children, whether sons or daughters, to all heretics, but rather to receive them, if they profess that they will become Christians and Catholics." And the Council of Chalcedon, in the aforementioned canon: "But let no marriage be contracted with a heretic, pagan, or Jew, unless the person who is being joined in marriage promises to convert to the orthodox faith."

4. From these, and omitting others, it is quite clear that mixed marriages are entirely illicit; for this reason, the Holy Mother Church has rightly always detested them, and has striven to prevent the faithful from entering into them. However, in order to remove the dangers that can arise from mixed marriages, certain circumstances must concur, as written by the Most Holy Pope Benedict XIV (2), which, when considered by him who has the power to grant dispensations, open the way to a legitimate dis-

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pensation, by virtue of which a marriage between a heretic and a Catholic is made licit. These circumstances, such as the benefit to the Church, the public good, the avoidance of a very grave evil, and others, which generally constitute the canonical reasons for granting marriage dispensations, are required to relax the impediment of mixed communion in any case; but, which must be carefully noted, they are by no means sufficient.

5. Furthermore, suitable guarantees must be required from the contracting parties to remove the danger of perversion from the Catholic spouse, to ensure that the non-Catholic spouse is converted, as far as possible, and that all the children of both sexes are educated entirely in the sanctity of the Catholic religion. These guarantees, which natural and divine law require, mean that mixed marriages can never be permitted by any human authority without them.

6. Therefore, having the canonical reasons, and having the aforementioned guarantees, by which those things that are contrary to natural or divine law are avoided, a dispensation must be obtained from the competent ecclesiastical authority in the law that prohibits mixed marriages, so that they may be celebrated without sin; otherwise, they are never licit, except with grave sin.

7. Furthermore, it is illicit and sacrilegious to appear before a heretical or schismatic minister, either before or after the celebration of mixed marriages, whenever that minister, as a minister devoted to the sacred rites, is present, and acts as if he were a parish priest; for the Catholic party would be associating himself with the heretical or schismatic rite, from which all communication with heretics in their sacred rites is forbidden. Therefore, those who do so would sin mortally and must be warned. However, if, as happens in some places, the heretic or schismatic acts merely as a civil magistrate, and whatever he does is purely a civil and political act, and concerns only civil effects, then (1) Can. L XVII. (2) De Syn. Diosc. Lib. VI. Cap. V. a. IV.

[*Latin ed. p. 639*]

S. R. U. INQUISITIONIS 639, and absolutely no profession of a non-Catholic rite is tolerated, nor can it be inferred that it is disapproved if a part of the Catholic party, under the pressure of schismatics or heretics, or by the force of civil law, approaches the same minister before or after the marriage.

8. Furthermore, let pastors of souls know that if they are questioned by the contracting parties, or if they certainly know that the minister of a heretical sect is about to perform the marriage, they cannot remain silent, but must warn the betrothed of the grave sin they are committing. However, in order to avoid serious evils, if in any particular case the priest or parish priest has not been consulted by the betrothed, whether it is permissible or not to allow the minister of a heretic or schismatic to perform the

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marriage, and if the betrothed have not explicitly declared their intention to do so, let them nevertheless consider that they may perhaps approach him to give or renew their consent to the marriage, and furthermore, considering the circumstances present in the case, let them foresee that a warning will not be helpful, but rather harmful, and that a material sin may be turned into a formal guilt; then let them remain silent, provided that the scandal is removed and that all the conditions and precautions required by the Church are duly observed, especially the granting of freedom of religious exercise to the Catholic party, and also the education of all the children in the Catholic religion. But if the betrothed approach a Catholic priest or parish priest for the blessing of the marriage after they have already celebrated it before a minister of a heretic or schismatic, and this is publicly known or notified to the betrothed themselves, the Catholic priest shall not participate in this marriage, unless, as is presumed, the other conditions are observed, and the Catholic party, having repented of the fault committed beforehand, has duly obtained absolution.

9. A few things remain to be added concerning betrothals. Betrothals between one party Catholic and the other schismatic or heretic are illicit and therefore invalid, unless they are celebrated with a prior, legitimate dispensation.

10. Therefore, with the solicitude with which they care for the sheep entrusted to them, let the local Ordinaries diligently strive to deter them from mixed marriages as much as possible, or at least to allow them only if the strictest precautions are observed, and with a legitimately obtained dispensation, always impressing upon them the Catholic dogma, namely that salvation cannot be obtained outside the Catholic Church. Let the celebrated disciples of the Apostles, St. Ignatius M., insist with the words (1): "Do not associate, my brothers, with anyone who causes schism, for he will not inherit the kingdom of God." Let this exhortation, both from you yourselves and from other pastors of souls, incite the Christian people to safeguard the Catholic faith and unity with ever greater zeal, and therefore to avoid all dangers of abandoning it, so that the aforementioned goal may be achieved concerning mixed marriages.

(1) Epistle to Philadelphia.

[*Latin ed. p. 640*]

640. The Sacred Congregation of the Holy Office decrees that the aforementioned Prelates shall also ensure that the memory of the well-known precept of natural and divine law is never forgotten by the faithful, namely, that we are commanded to flee not only sins, but also those dangers which closely lead to sin; and also that another precept is observed, by which parents are commanded to raise their children in the discipline and correction of the Lord, and therefore to instruct them in true worship, which is uniquely offered to God in the Catholic Church. Therefore, it is necessary

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to admonish the pastors of souls to diligently watch over their flock, so that as soon as they discover that young men or women intend to enter into a marriage covenant with heretics, they may instruct both them and their parents with salutary teachings, and omit nothing that might deter them from violating the commandments of God and the Church. Finally, the faithful must be instructed, both through public catecheses and through private instruction, concerning the constant doctrine of the Church on this matter, so that they are never unaware of the canons condemning mixed marriages.

12. And since nothing is to be left to the judgment of the priest alone in this most serious matter, it must be ordered that they promptly inform the Bishop of any mixed marriage being contemplated, carefully providing all circumstances of the matter, the place, and the persons involved. Both the Bishop and the parish priests must diligently ensure that the spouses faithfully fulfill the promises made. The Sacred Congregation, having considered that these are the commands of the Supreme Pontiff, has deemed it necessary to communicate this to you, and in the meantime, prays for all blessings and happiness.

(1) Given in Rome, from the Chancery of the Holy Office, on the 12th of December, 1888.

JOSEPHUS MANCINI

Sacred Roman and Universal Inquisitor, Notary.

Thursday, the 9th of January, 1889.

Proposed question: "Whether Ordinary pastors, in cases of extreme necessity, can habitually delegate to parish priests and to all approved confessors the power to grant dispensations regarding public impediments to marriage in cases of mortal danger, as granted by the Supreme Congregation of the Holy Office on February 20, 1888 (1), or not?"

Most Eminent and Reverend DD. Cardinals, General Inquisitors against the heretical wickedness, have decreed: "It is to be requested of the Most Holy [Pope] that he deign to decide and declare whether those to whom the power of the aforementioned decree of the Supreme Congregation of the Holy Office, granted on February 20, 1888, has been given, can habitually delegate that power to parish priests only, but only in cases in which there is no time to appeal to them, and there is danger in delay."

On the same day, and on that Thursday, the Most Holy [Pope] graciously deigned to assent in the usual audience with the Reverend Fathers Assessors of the Holy Office, according to the suffrage of the Most Eminent and Reverend Cardinals.

Ios. Mancini

Sacred Roman and Universal Inquisitor, Notary.

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(1) The aforementioned instruction for the clergy of the Latin rite was previously reported in Vol. VI, 456.

(2) These letters were previously reported in Vol. XX, 543.

[*Latin ed. p. 641*]

641 FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRAPANI. REGARDING JURISDICTION. Dated December 14, 1889. Session 25, chapter 9, Concerning Reforms. In the year 1736, the priest Salvator Morello, canon of the church of St. Lawrence in Trapani, which was then a collegiate church of the diocese of Mazara, but is now the cathedral of the diocese of Trapani, established a canonry and endowed it. However, in the documents of endowment and foundation, drawn up by the notary on August 14, 1763, he expressly reserved for himself, his heirs, and successors forever, the right of patronage, with these words: "As the founder of this canonry, he reserved for himself the right of patronage and the power to choose the canons, and to grant the prebend for himself and his heirs and successors forever." Because, moreover, the priest Morello had wished to be the first canon, "with the approval of the Holiness of his Eminence"; and because he had also stipulated "that he, as the donor, should be able, both in life and at the point of death, to choose and name his successor according to canon law; and if, without nomination, he should pass away from life, then the election of such a second canon should be made by his heirs and successors," therefore, in the executorial apostolic bull concerning the election made by the founder regarding himself, the apostolic delegate had the following: "We, therefore, wishing to execute the apostolic mandate in this matter, and to provide for you concerning the aforementioned canonry, grant to you, with special reservation and respect, the privilege and indult of patronage, and the power to present suitable ecclesiastical persons before the local Ordinary in said canonry, and to grant the prebend for the benefit of yourself and your heirs and successors, and likewise with the power to..."

COMPENDIUM OF THE FACTS. Acted, Vol. XXII, page 263.

[*Latin ed. p. 642*]

642 DREPANEN. And with the authority previously granted to you by this apostolic decree, you have the power, so that you may lawfully and validly, once in your lifetime, or at the hour of death, designate a suitable ecclesiastical person to succeed you in your canonical office. However, if you do not make such a designation, the aforementioned right of patronage shall immediately devolve upon those to whom it rightfully belongs, according to the tenor of those same bulls.

Shortly thereafter, and precisely on July 18, 1740, in his last will and testament, the priest Morello designated his mother as the heir to all of his temporal goods, as a sort of trust, and substituted for her the chapter; but

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with regard to the right of patronage, he designated his sister, Francisco Luparello, who was married, and her children as his heir and successor, and upon their death, he designated the chapter. This is indeed true; and first, with regard to his patrimonial goods, the testator stipulated: "In and concerning all and each of his movable and immovable goods... he designates as his universal heir, Mariam Greco... his beloved mother, with the reservations of the legacies and provisions contained herein. And the testator wills and orders that his said mother shall be the administrator of his hereditary goods, with the power to use and enjoy the income and fruits thereof, and if necessity so requires, even to apply the principal. However, upon her death, and within three hours before her death, the aforementioned chapter of his collegiate parish church of St. Lawrence shall succeed her and shall succeed to the aforementioned hereditary goods, substituting for her in the aforementioned trust in the said hereditary goods remaining after the death of his said mother. And this is to the effect that the fruits of the entire remaining hereditary estate shall be applied to the celebration of Masses for his own soul and for the souls of his loved ones."

With regard to the right of patronage, he stipulated the following: And because the testator himself held a canonry in his collegiate church,

[*Latin ed. p. 643*]

ARTICLE 643. The endowment is named after Saint Lawrence, and is established according to the form of the founding contract celebrated in my writings on the fourth of August, 1736, with the reservation of the right to choose canonical successors by his heirs, so that the testator himself, both in life and at the point of death, may choose, according to the canon, his immediate successor, who is first; therefore, the aforementioned testator said, and declared, and says, and declares that he wishes to make the nomination of this his successor in the aforementioned testamentary schedule. Furthermore, he wished and desires that the right to choose future canons perpetually in said endowment should be, during the life of Anne Mary Morello, his sister, and the wife of Francis Luparello, and of their children, both male and female, born and to be born of said sister and their children, who, during their lives, shall be understood to be and shall be the heirs of the aforementioned right in the following order, namely, as long as said sister lives, whenever the election and nomination of canons occurs, the election and nomination shall be made by said sister; upon her death, it shall be made by her firstborn son, and in his absence by the second, and so successively until the extinction of all male children; and if they are lacking, the election and nomination shall be made by the eldest female child, and in her absence by the second, and so successively as above until their extinction; upon the extinction of all male and female children of said Anne Mary, his sister, the aforementioned right to choose and nominate canonical successors in said endowment shall pass to the Roman Chapter,

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as its universal heir, from which such election and nomination must always and forever, and perpetually, be made, - with the express condition that, at the time of election and nomination, if there are relatives of the testator who are clerics or priests, and are capable of holding such a canonry, they must be chosen and preferred to all others, provided that they are enrolled, or are then enrolled, among the clerics and priests of said parochial and collegiate church of Saint Lawrence, and in no other way, nor by any other means.

[*Latin ed. p. 644*]

644 DREPANEN. The successor of the founder in the canonry was the priest Gonzalez, who, according to a testamentary document by the founder himself, was elected, in accordance with the authority granted to him in the founding bull. He was succeeded by Dominicus Luparello, and then by Ioannes Adragna, the founder's nephew, and subsequently by his great-nephew, both elected by the founder's sister and her sons. After the death of Ioannes Adragna, and then of Anna Maria Morello-Luparello, and also of her sons, the chapter decided that, in accordance with the law of patronage as stipulated in the aforementioned will, it was called upon to exercise this right; and therefore, on September 11, 1808, it elected Franciscum Adragna, the founder's great-nephew, whom the Bishop confirmed, without any objection. However, in the year 1834, after the death of the canon Franciscus Adragna, matters did not proceed in this manner. For the chapter, on its part, elected the priest Röas; but Rosaria Adragna, claiming that, by virtue of her kinship with Anna Maria Morello-Luparello, this right belonged to her, nominated the priest Siracusa. The dispute was brought before the civil tribunal of Drepanen, which, on September 13, 1834, settled the matter with its judgment, deciding that the active right of patronage belonged to the chapter. Against this judgment, Rosaria Adragna appealed to the superior court of Panormitan, which ruled that the judgment of the lower court be overturned, and that the right of patronage be granted to her. Without objection from the chapter, after a period of time, the canonical institution was conferred upon the priest Siracusa by Lady Adragna. In the year 1845, Rosaria Adragna died, who, according to the judgment of the court of Panormitan, had been recognized as the absolute and universal patron of the canonry; in her will, she stipulated that this right should be transferred to the cantor and dean of the same cathedral chapter. From this, a more complex dispute arose, and it immediately flared up after the death of the canon Siracusa in the year 1885. Indeed, the cantor and dean, as absolute patrons established by Rosaria Adragna for the canonry, nominated the priest Paulum La Via,

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from the founder's lineage.

[*Latin ed. p. 645*]

D REP AN EN. 645 extraneum: The chapter, in a separate argument, maintains that, according to the will of the priest Morello, the right of active patronage belongs to it, and that the judgment of Palermo is invalid; therefore, it chose John Sanmartano, a relative of the founder, and for this reason, he is to be preferred to others. Under these circumstances, the Bishop brought the matter before the Sacred Congregation, so that the controversy might be resolved.

SYNOPTIC DISCUSSION: DEFENSE OF THE CHAPTER. The advocate, who defends the interests of the chapter, in order to assert the right of active patronage for his client, argues primarily that the founder, in his testamentary dispositions, intended that the exercise of the right of patronage belong to his sister, Anne Mary Morello-Luparello, and, after her death, to her sons successively, according to their age, and then equally to the daughters, and finally, after all of them have died, to the chapter. To prove this, he cites the words of the will, which read as follows: "After all the male and female children of the aforementioned Anne Mary, his sister, have died, the aforementioned right of choosing and appointing canonical successors in said canonry shall pass to the aforementioned chapter, as its universal heir, from which such election and appointment must always, and until infinity, and perpetually, be made." He also states that it is not at all doubtful that the right of patronage can be converted into an ecclesiastical right, even if it was previously a civil, hereditary, or mixed right. This, he says, is taught by Schmalzgrueber in *De iure patronato*, p. 4, n. 6, and by Ferraris in *Ius patronato*, a. 1, n. 12. The Sacred Congregation, in the canonry of Civitatis Plebis, on December 23, 1826, § Iuspatr. Furthermore, it is clear from the words of the will that the right of patronage was only temporarily civil and hereditary, until the founder's sister and her children were alive; then, according to the founder's will, it was to pass to the chapter and thus become ecclesiastical. It cannot be objected, the advocate argues, that the chapter was summoned to exercise the right of patronage, as if it were the universal heir of the founder.

[*Latin ed. p. 646*]

646 DREPANEN. Concerning the words, "the aforementioned right of choosing and nominating... shall pass to the Reverend Chapter, as its universal heir," it is maintained that the Chapter did not become the heir of the founder. The procurator responds that the mother of the founder, although acting as a trustee, nevertheless, having been granted the right by her son, sold all of the son's goods; for this reason, the Chapter was indeed the heir by law, but not in fact, due to the injustice committed by the initial trustee. Furthermore, it cannot be maintained that the Chapter did not inherit. For,

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even if it did not explicitly inherit, it certainly and tacitly did inherit and accept it, when, after the death of Anna Maria Morello-Luparello and her children on September 11, 1808, a priest, John Adragna, was chosen for the then-vacant canonry of Morello, and this nomination, made by the Chapter, was ratified and confirmed by the Bishop. This could not have occurred unless the Chapter had implicitly accepted the inheritance. Moreover, the law permits and considers valid a tacit and implied acceptance of an inheritance when someone acts as if they are the heir. (Laws 20 ff. concerning the acquisition or renunciation of inheritance, and Laws 21 and 88 ibid.). Furthermore, the advocate continues, since the words are clear and require no interpretation, and testamentary dispositions must be observed religiously and without any ambiguity, it follows that the right of nominating to the canonry of Morello was abstracted from the descendants of Anna Maria Morello-Luparello and passed to the Chapter. Indeed, the words of the testament clearly state that after the death of the founder, this right should be transferred to the Chapter, along with the rights of her sister and her children. Therefore, it is entirely illegitimate for Rosaria Adragna, the testator's great-niece, and the niece of her sister, to presume to have the right to exercise this patronage. And even less could this same right be transferred from the will to a singer and dean of the Chapter, that is, to outsiders. For, if, in addition to the founder's sister and her children, other descendants were also called to the patronage, then even Rosaria Adragna, the testator's great-niece, would have been called; and the patronage would have been made.

[*Latin ed. p. 647*]

DREPANEN. 647 pertains to the family and to ecclesiastical matters, and therefore cannot be transferred to outsiders. Nor does the judgment of the civil court of Palermo prevail, which recognized the free patronage of Rosaria Adragna. Since, in the first place, a lay judge cannot know the causes of patronage, because the object of the judgment is intimately connected with spiritual law, and is ordered to the granting of benefits, therefore, although the judgment may directly and immediately affect temporal matters, nevertheless, since the temporal matter is connected with the spiritual, the knowledge belongs to the Church, because "that which is more noble draws that which is less noble to itself, and the temporal thing ceases to be such as soon as it is joined to the spiritual." Schmalzgrueber, title 1, On Judgments, § 3, nos. 50, 51. Thus, Alexander III, chapter 3, On Judgments, warned: "The cause... of patronage is so connected and attached to spiritual causes, that it can only be defined by ecclesiastical judgment." Furthermore, he adds that, at that time in the Kingdom of Sicily, ecclesiastical jurisdiction in matters of benefices was entirely recognized and attributed to the Church, as appears, among other things, from the royal rescript issued on August 22, 1772, in the case of Aversanen, concerning patronage, in

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which the King declared that, even though it concerned a lay patronage, the knowledge of the cause belonged to the ecclesiastical forum. This was consistent with the preceding general royal decree of June 9, 1770, and was later confirmed by the royal resolution of the Council of State of November 9, 1819. Hence, it is not surprising, says the author, that the Bishop himself considered the judgment of the civil court of Palermo to be null and void due to lack of competence. From all of the above, the chapter's advocate is confident that the chapter's right, although violated by the judgment of a civil judge, will be restored by the Holy See. DEFENSE OF THE PRIEST SANMARTANO. Furthermore, the priest Sanmartano himself confidently appeals to the instrument of endowment and to the words of the will, which are conclusive. For the priest Morello held a canonry.

[*Latin ed. p. 648*]

648 DREPANEN founded [a canonry] for himself and his family, that is, he established a passive patronage in favor of himself and his relatives. Indeed, it is written in the instrument of endowment: "Voluntarily, by himself and for his own benefit, acting in his lifetime, freely, simply, and irrevocably, he gave and gives... and as the founder of this canonry, he reserved for himself the right of patronage and the power to choose canons, to provide for himself and his heirs and successors perpetually, as he chooses himself as a canon. " And even more clearly, in the testamentary codicil, the founder stipulated: "To all deceased male and female children of Anne Mary, his sister, the right to choose... shall go to the Reverend Chapter, as his universal heir... with the express condition that, if at the time of the election and nomination there are consanguineous persons of the testator who are clerics or priests and capable of holding such a canonry, they must be chosen and preferred over all others of his relatives." It cannot be said that the priest Sanmartano was presented by the Chapter, since the Chapter lacks the legal right to present; therefore, the presentation is null, and the priest's claim must be rejected. Furthermore, even if the Chapter had the legal right, since the priest Sanmartano is of the founder's blood, he is already called by the founder himself, and it does not matter whether he was or was not legitimately presented. The canon of jurisprudence is that, in the case of passive patronage, the nomination and institution of a cleric called by the founder is necessary; and the cleric called by the patron, even if omitted in the presentation, must, if he is suitable, be chosen and instituted by the Ordinary. Lambertini, L. 2, p. 1, q. 8, a. 4, n. 11j; Pitonius, alleg. 82, n. 10; C. De Luca, Discept. 18, De iurep., n. 3. This theory is built upon and expanded from the general principle stated in the Glossa in cap. *Neminem dis.*, 70, v. *Possess.*, namely, "those clerics are to be instituted from whose goods the church was founded," and by St. Rota in decisions 120, n. 40, and 122, n. 11 and 12, part 11, *Recent*, affirmed with these

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words, namely, "the sacred canons, as to attracting the faithful..."

[*Latin ed. p. 649*]

DREPANEN. 649: The founders are granted the right of patronage in the active part, namely, in the nomination of candidates, thus inclining greatly towards preferring their own blood and descendants in the other, passive part. "Nor does it matter that the testator did not explicitly speak of passive patronage in the foundation's statutes; for, at least implicitly and equivalently, according to the author, he claimed it for himself when he said that he was establishing the canonry for himself and his own. Furthermore, it is to be noted that that pious priest, in the act of founding, "reserved for himself the right of patronage and the power of choosing the canons of the present prebend for himself and his heirs and successors." Therefore, in virtue of this general reservation, the founder had the faculty of disposing of the right of choosing at any time. And when he did so in his will, that disposition is valid and effective, just as if it had been made at the very founding. And he also states that this would be true even if he had not reserved such a right for himself, citing the opinion of Gagliardi, who in *Commentaria de Jure Patronato*, vol. 2, chapter 21, paragraph 12, writes: "The founder, with the consent of the Ordinary, can add passive patronage outside the limits of the foundation in favor of his family or house, or of his fellow citizens or of a collegiate church, because such a condition is not contrary to the law, but consonant with it, as the Sacred Rota has declared in decision 120, paragraph 10, page 2, recent." Indeed, the Sacred Rota in decision 122, page 11, *Decent*, teaches: "Unless the right of another is prejudiced, the founder is not bound by any particular laws, whether before or after the episcopal consent, and he can freely present a cleric who does not possess the qualities prescribed in the foundation... or convert hereditary patronage into family or clan patronage, or add passive patronage to it." It could not be understood that the founder, in his will, saying "the right of choosing... passes to the Reverend Chapter as his universal heir, with the express condition that... his relatives must be chosen and preferred above all others," intended two things, namely: 1.

[*Latin ed. p. 650*]

650. DREPANEN argues that the chapter would not simply and absolutely succeed to the right of patronage, but only as a universal heir, and furthermore, that in the case of succession, the chapter would be bound by the obligation of passive patronage; this condition, having been added only to the chapter and not to other successors, obligates the chapter, but not the others. However, the chapter never became the heir of Morello. Therefore, simultaneously, from these reasons, the chapter's right to present [a candidate], and also the right of the priest Sanmartano, who was presented and passively called, are undermined. It is highly improbable that the founder,

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who established the canonry through himself and his descendants, would have limited the right of passive patronage in his testamentary codicils, and would have prescribed, in a particular case only, if the chapter actively exercised the patronage, that his own [descendants] should be preferred. Furthermore, he points out that the assertion that the chapter did not become the heir of Morello is false, both in fact and in law. In fact, because the chapter has done more things that clearly and manifestly reveal that it has, if not expressly, then at least tacitly, accepted the inheritance; as is evident from what it did in the years 1808 and 1834, when it chose a priest, La Via, for the vacant canonry. But also in law, the argument does not hold. Because at the time when the founder made his will, Roman law was in force in Sicily, according to which, for a will containing a fideicommissum [a provision for succession] to be valid, it was necessary for the fiduciary heir to accept the inheritance. *Tit. Ad Senat. 'Trebel. § 7 et 8.* Moreover, in the case of Rosaria Greco, the fiduciary heir undoubtedly accepted the inheritance. Therefore, and so the most important of the difficulties that are raised against the chapter and the priest Sanmartano, according to the patron, are overcome.

DEFENSE OF THE PRIEST LA VIA. He argues in favor of the priest La Via, defending the validity of the presentation made by the canonical dean and cantor with his favor, and he presents documents in the records to support his case. Having stated this, he preemptively points out that the question that is now raised is...

[*Latin ed. p. 651*]

DREPANEN. 6. If it is directed that the judgment of Panormitana, dated December 6, 1836, be rendered null and void by those who lack the standing to appear in court, and are therefore to be expelled from the very threshold, it should be noted that the chapter has not interposed any appeal or recourse to the Holy See against said judgment. Therefore, all action must be taken according to the sacred canons, as in Clementine, *de appell.*, lest lawsuits be prolonged indefinitely. However, it is stated, by the testimony of the chancellor of the episcopal curia, that the chapter has indeed not appealed. But not only is the chapter lacking the proper standing, but even Sanmartano, who has promoted his passive vocation, seems to be to be expelled from the threshold of the court, if he is a regular of the Order of Friars Minor of St. Francis. Furthermore, one who is such can only obtain a canonry in the cathedral church with a special indult, which is rarely granted, according to the Sacred Congregation, *in Ästen.*, December 15, 1646. However, the advocate argues, that he only obtained the indult of secularization while the lawsuit was pending, and after six months had passed for the election. Moreover, it is added that the founder ordered that he be elected who is attached to the clergy of the church of St. Lawrence. It is well known in law that if several conditions are joined together in a foundation,

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all must be fulfilled (Voet, *ad ff.*, lib. XXVIII, tit. VII, 29 § pen., *Institution, de haer. instituen.*). But the priest Sanmartano is neither attached nor can he be legally attached to the chapter of St. Lawrence. It may be said that the judgment of the civil court of Panormitana is null due to lack of jurisdiction, since causes of patronage are to be decided by an ecclesiastical and not a lay judge. However, the advocate replies that, notwithstanding this general rule, the jurisdiction of the civil court has been recognized in those cases in which the right of patronage is treated incidentally and accessarily, and especially in matters concerning fiefs, legacies, and inheritances. The author refutes this thesis with the authority of the canonists, and especially from Reiffenstuel, who in book II, title I, number 76, states: "Furthermore, everything said so far, namely that a lay judge cannot hear cases concerning the right of patronage and the like, is understood to mean..."

[*Latin ed. p. 652*]

652 DREPANEN, that is, a case concerning itself, and primarily judged; for accessory and secondarily, it can pertain, as for example, in judging concerning a monastery to which the right of patronage is attached. Just as it is not permitted to sell the right of patronage itself, it can nevertheless be sold through the sale of the entire estate, to which it is inseparable, cap. Cum saeculum 13, De iurepatr. "Especially because, as the Canonists teach, the continuity of the cause makes the judge, who would not otherwise be competent, competent, and all contradiction in judgments is avoided." Devoti Insta. lib. III, tit. 4, § 18; S. Rota in Romana Pecuniaria, 13 January 1836, § 8. Furthermore, Gallemart, in his annotations to the Council of Trent, Disc. XXIII, n. 20, states that purely ecclesiastical causes are those in which clerics and ecclesiastical persons are entirely exempt from the lay forum, and in which the principal matter concerns the right of patronage. Moreover, it is the fact, the patron notes, that a pious founder may have endowed a chapter and, accessory to this, granted the right of patronage, so that if the universal heir were to arise, upon the death of a sister, and no sons existed, he would inherit the chapter as his universal heir. Therefore, the lay forum was competent to judge concerning the right of patronage, since it concerned a matter connected with inheritance and the entire estate. And all the more so, considering the concessions granted by the Roman Pontiffs, which the monarchy of Sicily enjoyed due to the elimination of the Saracen tyranny, the restoration of the Catholic faith, and the churches of Rome being again subjected, according to the bull of Urban II. Furthermore, local customs and practices are to be taken into consideration, and ecclesiastical prudence teaches that it is not easily permissible to eliminate established practices; it also tolerates the acquisition of jurisdiction and the competence of a forum by simple prescription, cap. Cum contingat, De foro competenti; for it is commonly said that custom gives and takes away jurisdiction; Schmalzgrueber, tit. 32, De iudiciis. But, and this must be kept very much

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in mind, is the agreement entered into between Benedict XIV and Charles III, King of both Sicilies, in the year 1741; in which it was stipulated that the following cases pertain to the ecclesiastical jurisdiction: "Causes be-

[*Latin ed. p. 653*]

DREPANEN. 653: Beneficials, except those under royal or feudal patronage, and those cases in which the judgment depends on examining whether the patronage is attached to the fief or concerning the universality of goods in other lay patronages. However, the matter in question concerned the quality of the universal heir, which the founder expressly required in the chapter. Therefore, if the judges possessed legitimate jurisdiction, approved by the Holy See itself, the patron concluded that the judgment was legitimate, and thus constituted a res judicata. The patron confirms this, citing Salzano, *Esercizio della giurisdizione della Chiesa nel foro esterno*, Ap. 16. Furthermore, it can be argued that in this case, the patronage was not lay, but ecclesiastical, since the right of patronage had not yet passed to the chapter, and therefore had not yet become ecclesiastical from a lay source. In this case, it can still be considered lay, as stated in Fargna, *De iurepatron.*, vol. VI, chap. I, no. 2. Moreover, the jurisdiction of the lay judge also extended to the question of the interpretation of the word "sons," namely, whether this word should be understood to include grandchildren and descendants. Although others may lean towards a different opinion, the following words from leg. 22 ff. concerning the meaning of words are read with caution: "The term 'sons' is often, and in many ways, understood to include grandchildren." In addition to all this, nature itself teaches us that parents, who take wives with the intention and desire of having children, include all descendants in the appellation of "sons." Therefore, the patron concludes that, from the literal disposition of the Concordat, the jurisdiction of the Panormitan tribunal is undoubtedly confirmed, and therefore, with the matter already judged, nothing else need be investigated. See Legge 12, 13, 14 ff. Concerning exceptions to res judicata, see Pothier, *De obligationibus*, no. 930; Duranton, vol. VII, no. 637; Merlin, voce "Cosa giudicata." The same petition is now being reproduced, which was already introduced by the chapter in the year 1834, claiming that the right to nominate belonged to the Morello canonry, a claim which the tribunal rejected. Therefore, it must be avoided that the same matter be judged twice. However, once the validity and jurisdiction of the Panormitan judgment have been established, the patron states that the passive right of patronage must be completely excluded, since the founder alone...

[*Latin ed. p. 654*]

654 DREPANEN. The following was added in place of a chapter. Since

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the chapter does not possess the active right of patronage, it follows that neither relatives can claim the passive right of patronage. Indeed, if the underlying assumption is flawed, the arrangement collapses, and it is evident that the effect of the invalidated act extends to all who derive their origin and action from it. Argument. I. 31 ff. On pledges and hypothecations. Schmalzgrueber, On sentences and judgments, no. 83, etc. It cannot be said that the condition regarding passive patronage added to the chapter affects all heirs and successors; for Javolenus, On conditions and demonstrations, states: "If a condition is adapted to certain persons, we must refer it only to that degree to which those persons have been instituted." Caius, in leg. 73 ff. On instituted heirs, agrees: "If, under a condition, an heir is instituted, if we substitute, unless we repeat the same condition, we understand that we are substituting the very same heir." Troplong, On donations, no. 421, and following. Furthermore, it is evident from the facts that an external priest was named by the founder himself, and that no mention is made in the bulls, by which the Bishops conferred the canonical institution upon the named individual, of relatives, whether they actually existed or not, which would necessarily have had to be indicated. Finally, the advocate pointed out that if, contrary to the established judgment, which remains valid by its own force, a different judgment were to be rendered, the greatest difficulties would arise for the Government, to which recourse would be had for a regional judgment. After considering both sides, the following propositions were to be resolved:

Question I. To whom does the active right of patronage belong in this case?

Question II. To whom should the canonry be assigned in this case?

RESOLUTION. The Sacred Congregation, after discussing the matter on December 14, 1889, decided to respond as follows:

To Question I, affirmatively, in favor of both dignities.

To Question II, affirmatively, in favor of the priest, La Via.

[*Latin ed. p. 655*]

DREPANEN. 655 From which it is gathered. It is understood that it is just that, if several conditions are joined together in a foundation, all of them must be fulfilled. II. A lay judge cannot be competent to judge causes concerning patronage, even though the judgment directly and immediately affects a temporal matter, because, when a temporal matter is joined to a spiritual one, the more dignified draws the less dignified to itself, and the temporal matter ceases to be such as soon as it is joined to the spiritual. III. However, a lay judge can be competent to judge such causes, when patronage is treated incidentally and accessarily, and principally when feudal rights and fiefs, and inheritances, are concerned, to which patronage is inseparable. IV. By virtue of the convention between Benedict XIV and Charles

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III, King of both Sicilies, ecclesiastical jurisdiction has reserved causes concerning benefices, except for royal or feudal patronage, and those causes, the judgment of which depends on whether patronage is attached to a fief, or on the totality of goods in other lay patronages. V. From law 22 and following, concerning the signification of the word "son," nephews and all descendants are often included. VI. A tacit addition to the inheritance, which occurs when someone acts as heir, is permitted by law and is considered valid. VII. The person called "Cleric" by the founder must be chosen and instituted by the Ordinary himself, even if he was omitted by the patron in the presentation, provided that his suitability is known from elsewhere. VIII. Since the sacred Canons, as they have granted the right of patronage to founders in the active part of appointing, so they greatly favor blood relatives and descendants of the same founders in the other, passive part. IX. The founder, with the consent of the Ordinary, can add passive patronage outside the limits of the foundation in favor of his family or household, or of a fellow citizen or of a collegiate church, because...

[*Latin ed. p. 656*]

656 DREPANEN. He pronounced a judgment that was not contrary to law, but in accordance with it. X. Without prejudice to the rights of others, and with the consent of the bishop, either before or after, the founder, who is able to present Clairac, may, with almost complete freedom, establish laws, whether before or after the episcopal consent, and may exempt the founder from certain obligations, or may abolish other burdens and requirements, or may convert hereditary patronage into familial or gentile patronage, or may add passive patronage to it. FERRA RI B N. OF MARRIAGE. May 5th and December 10th, 1883, and September 7th, 1889. Session 24, Chapter 1 on the reform of marriage. COMPENDIUM OF THE CASE. Francisca, daughter of Thomas Larusso, a military leader in italica, while residing in Genoa, too readily yielded herself to the words of marriage and the advances of a certain Gherardo Pietrafesa, a military doctor. Upon learning of this, the girl's father, greatly enraged, threatened both the girl and Gherardo with dire consequences, unless they would marry, but under the condition that Francisca would not be delivered to the man until after the dowry was established, which he himself was unable to provide at that moment. And Gherardo, not wanting to delay, said that he would have to engage in a singular struggle with himself if the marriage were not to take place immediately; and he commanded the girl not to dare to refuse her consent. Consequently, on April 22nd, 1864, with dispensations granted, the marriage was celebrated in the metropolitan church of Ianuensi, with the rites of the Catholic Church observed. After this was completed, the father immediately took his daughter back home with him, and on the same day or the following day, he went to Bari with her. There, Francisca stayed with her grandmother, until all that was necessary was

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prepared for her to enter the Institute of Batti; which she truly entered.

[*Latin ed. p. 657*]

FERRARA, 657, nearly two months later. Gerard returned to his home in the town of Rionero, within the boundaries of the diocese of Melphi. For seven years, Francisca resided in the aforementioned Institute, during which time she received several letters from Pietrafesa, to whom she also responded. In these letters, the matter of the dowry was most frequently discussed, for Gerard insisted that he could not keep her with him without a dowry. Thus, matters remained until the year 1871, when, with the consent of her father, and accompanied by her grandmother, Francisca returned to her father, leaving the Institute of Battifort. However, shortly thereafter, the family was saddened by news, for Thomas, of Ferneres, while stationed there, passed away in the year 1874. On this unfortunate occasion, a certain John Balboni proved to be most humane; he assisted Francisca and her grandmother in every way he could; he revealed his feelings to Francisca, proposing marriage, and accompanied her and her grandmother to Darío; he then placed the young woman again in the Institute of Battifort, at his own expense, and after three months, he brought her back to Ferneres. From that time onward, John and Francisca lived together as husband and wife, and had children. Some years later, this manner of life became known to Gerard of Pietrafesa, who, as he himself recounts, considering himself free from all obligations, and having obtained proof of his bachelor status, entered into a second marriage with another woman in the year 1878, from which he had three children. He informed Francisca of this union in the year 1880. Thus, it was that Francisca, in the same year, 1880, petitioned the Supreme Pontiff, requesting a dispensation from the marriage contracted with Gerard, and also that she might follow the counsel of her conscience, so that she might be lawfully united to John Balboni, and legitimize her offspring. As is customary, the Sacred Congregation of the Council entrusted the preparation of the proceedings, concerning the valid but unconsummated marriage, as well as the reasons for the dispensation, to the Ordinary of Ferneres. The Court of Ferneres, obeying the mandate of the Sacred Congregation, Acts, Volume XXII, section CCLXIII, page 42.

[*Latin ed. p. 658*]

658. The process initiated by the FERRA.RIEN. was concluded, and the question, following the proper order of law, was presented at the general assemblies on May 5, 1883, under the usual formula: Whether it is necessary to consult with the Holy See regarding a dispensation from a marriage that was ratified but not consummated; and the Eminent Fathers responded: "The acts of the process should be extended and completed, according to the instructions to be prepared by the defender of the marriage office." After these matters were concluded, the case was again presented on De-

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cember 1 of the same year, 1883, and again dismissed with the response: "The acts of the process should be extended and completed according to the instructions to be prepared again by the defender of the marriage office, and they must be carefully observed." Finally, the case was presented a third time, for economic reasons, with the vote of both consultants and the observations of the defender of the marriage office.

SYNOPTIC DISCUSSION:

The canonist is entirely of the opinion that Gherardo and Francisca could not have consummated the marriage. Indeed, Gherardo entered into the marriage under duress, and under the condition that he would not take the girl with him unless after a dowry had been established; and so it was done. Francisca immediately went to her father's house; Gherardo, as some witnesses testified, immediately departed for his homeland. On the same day, or at most the following day, the father took his daughter to Barium, where she remained with her grandmother for two months, during which time, as Nicolaus Fino testified, she was never seen by Gherardo. After two months had passed, she entered the Institute of Battifort, where, as Anna Wambacher testified, "she was never visited by Pietrafesa." Returning from the Institute, with her grandmother, Francisca returned to her father, and witnesses testify that on this occasion she did not see her husband. After her father's death, she came into the hands of Ioannis Balboni, whose sister Albina testified: "that she could assert with absolute certainty that Pietrafesa FerraHam never came to see her, nor did Franciscus have any correspondence with her, except for one or two letters, concerning the matter in question."

[*Latin ed. p. 659*]

FERRARIEN. 659 The separation which the witnesses allege, both Francisca and Gerard confirming it, and concerning whose veracity, given the reputation of the witnesses, it is impossible to doubt, must be understood as meaning that, from the moment of the celebration of the marriage, the spouses were never together, and that the marriage could not be consummated. Hence, the canonist concludes that a dispensation must be granted. OPINION OF THE THEOLOGIAN. The theologian holds the same view, who first argues that the marriage was valid in this case, because any fear, if any fear existed, did not prevent the voluntary consent, and the consent was free: "The marriage would be valid, if the father threatened with punishment and the other entered into marriage to free himself." Thus teaches St. Alphonsus (Lib. 3, 1049). But, setting aside the discussion of validity, the theologian also maintained that the marriage had not been consummated, after a careful examination and collation of the depositions of various witnesses and the oaths of the spouses. He maintained the force

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of the oaths against the defender ex officio, because we should not easily judge those closest to us to be perjurers, especially when no contradiction appears in the depositions of the spouses. Having proven the lack of consummation, the theologian added the most serious reasons for granting a dispensation; namely: 1. The impossibility of reconciliation between Francisca and Gerard, an impossibility which clearly arises from the facts; 2. The danger, both for the woman and for the man, of remaining in adultery. 3. The legitimization of offspring. 4. The removal of public scandal; reasons which the Holy Congregation has repeatedly admitted in granting dispensations concerning marriages that are valid but not consummated. OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE EX OFFICIO. These things which have been discussed by the canonist and the theologian, were opposed by the defender of the marriage ex officio, who, assuming the validity of the marriage, recalled to the attention of the Most Eminent Fathers the ancient maxim of law: "The rapist must either provide a dowry, or marry, or be sent to the galleys," and argued that there was no consummation of the marriage, because it is not shown that the spouses...

[*Latin ed. p. 660*]

660 In Ferneres, postquam matrimonium consummatum fuerat, vel in brevissimo tempore postea, Francisca cohabitabat sola cum Gerardo; hoc, et quidem, ob testimonia aliquot qui contrarium affirmant. Praeterea, quidam Cavasci de Ferneres affirmavit: se, propriis oculis, saepe vidisse supradictos (Franciscam et Gerardum) iam matrimonio ecclesiastico coniunctos; et contra, in Curia Brixiensi deposuit, se eos vidisse in diebus in quibus de matrimonio celebrando agebatur, sed se numquam eos vidisse. Quod, secundum assertionem, non poterat accidere, dixit defensor, quia est contradictorium primo, quod tempore non suspecto manifestaverat. Praeterea, Francisca solebat dicere ad suam amitam, Philumenam Larusso, quod tantum tribus diebus cum marito coniuncta fuerat; haec declaratio est maxima momenti, quia, absque interrogatione et absque praeventione, facta est, et relata a teste Franciscae, quae est benevola. Ex his factis, et aliis auxiliis, defensor, studiosus, conabatur deducere consummationem matrimonii, quae dispensationis impossibilitatem secum tulisset. His, et aliis disputatis, propositum fuit: utrum sit consulendum ad Sanctum Officium pro dispensatione a matrimonio rato et non consummato in casu.

RESOLUTIO. Sacra Concilii Congregatio, die 7 Septembris 1889, re tertia discussa, respondendum censuit: Affirmative.

CONCORDIEN DIVISIONIS PAROECIAE ET ERECTIONIS. Die 7 Septembris 1889. Sess. 24. Cap. 15. de Ref.

COMPENDIUM FACTI. Haec quaestio proposita fuit die 8 mensis Iunii

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1889, et Emi Patres rogati: an et quo-

[*Latin ed. p. 661*]

CONCORDIE?*. 661. Regarding the petitions concerning the division of the parish church of St. Martin of Asio and the erection of new parishes, they responded: affirmatively, with the prudent judgment of the Bishop, provided that due consideration be given to the appropriate suitability for each parish to be erected. This decree, scarcely published, gave rise to a question: whether the word "division" indicated the erection of new parishes together with the suppression of the ancient church of St. Martin, or whether, rather, the word should be understood as a simple dismemberment, with the ancient matrix of St. Martin remaining intact. For the Bishop considered that the term should be understood in the sense of the suppression of the parish church of St. Martin and the erection of new parishes; while the municipal councilors of Clauzetti maintained that it should be understood in the sense of a simple dismemberment. To resolve this doubt, the Bishop appealed to the Sacred Congregation, requesting that it declare whether the term referred to a simple dismemberment, so that the matrix church with its titular pastor of St. Martin should still exist, or whether the matrix church should be understood as suppressed, so that, in addition to the fractions of Viti of Asio, the canal of Viti, and An duini, also Clauzetti should be erected into a parish, with the obligation imposed upon it to establish a suitable church, as had been prescribed for the aforementioned other fractions. And the episcopal curia deemed it necessary to inquire into this matter, because the municipal councilors of Clauzetti had insisted, both verbally and in writing, that the ancient parish of St. Martin should not be suppressed, but that it should be preserved as a parish for Clauzetti and for other places and fractions, which could not be separated from the ancient matrix of St. Martin. Synopsis of the Dispute. The Bishop's vote, which is more closely aligned with suppression than with dismemberment, along with the support of the previous resolution and decree, and indeed the very reasons of equity and prudence, favor the Bishop's vote.

[*Latin ed. p. 662*]

662 CONCORD!*. Let it be done. The Bishop states that, in fact, the territory of Altbunzlau, belonging to Saint Martin, has an elliptical shape, extending approximately 28,000 paces in length; 15,000 paces in width; and a circumference of 111,000 paces. Within this vast territory rises Mount Asium, upon whose summit are located the small villages of Fratte, Paveon, and Battaes, now called Reugons. Furthermore, beyond the mountain, to the north, are two places called Canal di Vito, and Canal d'Arzino, commonly known as Saint Francis. On the other side of the mountain, or to the south, extends the district of Clauzetto, as well as the two smaller places of Vito d'Asio and Anduins. However, the district of

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Clauzetto is larger than the others and constitutes a municipality in itself; the other four places, namely Canal di Vito and Canal d'Arzino beyond the mountain, and Vito d'Asio and Anduins on this side of the mountain, together form another municipality, which takes its name from Vito de Asio. The mother church of Saint Martin, although close to the district of Clauzetto, nevertheless exists within the boundaries of the municipality of Vito de Asio. Having stated these facts, the Bishop proposes that, in each of these places, parish churches be established, according to the natural and civil boundaries. Therefore, since in the place of Clauzetto there is the church of Saint James, near which the parish priest of Saint Martin has customarily resided from ancient times, he declares that this church should be raised to the status of a parish church. The same should be done for the places of Vito de Asio, Anduins, and Canal di Vito. Thus, the churches of Saint Michael, Saint Margaret, and Saint Anthony, which until now have been merely chapels, should be elevated to the status of parish churches. Furthermore, the Bishop expressed the desire that in the place of Canal d'Arzino, as in the other two places, namely Casiacco and Fismes, which are located at the extreme end of the entire territory, similar chapels be established, to be assigned to one or another parish, or even to be established independently, as time and circumstances may dictate. Finally, the church of Saint Martin, since it is separate from the inhabitants and does not have parishioners distinct from those of other churches, should not be assigned to any place or parish whatsoever.

[*Latin ed. p. 663*]

GONCORDIEN. In the year 663, the Bishop observes that, although the church is to be divided, it should be entrusted to three new parishes, with the agreement of all the priests of the dismembered parish. In this situation, the Bishop adds that it is most fitting that the division of spiritual jurisdiction should coincide with the natural and civil division of the territory. For, it is right to consider the reasons, whether natural or civil, that would lead to the uniting or dividing of citizens and the establishing of distinct municipalities; moreover, it is useful, since it removes difficulties and makes the spiritual administration itself easier. Therefore, it is not surprising that the Church, at all times, in the constitution of both parishes and dioceses, has kept this in mind as much as possible, and unless special circumstances prevented it, has also taken care not to offend the just inclinations of the people and the natural and political divisions. As for the particular situation in which the mother church of St. Martin is located, it has been observed that sufficient provision has been made for the honor and preservation of this ancient parish, and at the same time, for the just demands of the municipality of Asio. Indeed, since the mother church of St. Martin is not located within the territory of the municipality of Clauzetti, but is situated within the boundaries of the municipality of Asio, it seems

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best to assign this church to no particular place, and to leave it neutral and independent, since any assignment would offend one party or the other. Both the municipality of Asio claims rights over the mother church, because it is located within its boundaries, and would perhaps resent the priests of another municipality entering its territory; and the municipality of Clauzetti, because the location is superior to others and was the seat of the ancient parish. Having considered these and other matters, the Bishop concludes that the rescript issued by the H. S. C. should be understood not as a simple division, but as a suppression of the church of St. Martin.

WHAT THE CLAUZETTI MUNICIPALITY FAVORS. On the other hand, the citizens of Clauzetti are fighting for the altars and hearths, lest they be taken away from the ancient...

[*Latin ed. p. 664*]

664. DISPUTATION. This parochial division would be detrimental, either gravely, temporarily, or morally, because without it, a serious harm would occur. Indeed, it would become necessary to: 1. Impose a burden on the town of Clauzet to establish a new, suitable parish and to provide for new priests. For, with the abolition of the old parish, the tithe, or *quarti*, could not be established, since civil law prohibits it. Therefore, Clauzet would have to provide a large sum of money for the parish endowment and for the support of the priests, which it could not do, because it is burdened with debt; and even if it could, it would be unwilling, because it intends to collect the tithes or *quarti*. 2. Result in the abandonment of the parochial church of St. Martin, which, however, should be preserved, as monuments and works of worthy value are found within that church. And this even more so, because, as can be seen from the pastoral visitation carried out by the Bishop in September of the year 1886, that church is not lacking in necessary furnishings, vestments, and sacred vessels, nor does it require restoration. To which is added 3. that almost three thousand parishioners would be grievously harmed if they were unjustly and with great damage to themselves, and without benefit to the dependent churches, separated from the mother church, and if Clauzet were deprived of the status and dignity it has enjoyed for eleven centuries. 4. Finally, because the parochial church, to which honor and reverence are due, and which is legally to be preserved, would be destroyed uselessly, and would then require great expense and trouble to rebuild. Furthermore, they point out that civil law is present, which dictates that two municipalities subject to the same parish, when they wish to separate, must proceed in agreement, otherwise they would be acting in vain. From this, they conclude that, unless the wishes of the municipality of Clauzet were satisfied, the division of the parish would not lead to a successful outcome; for Clauzet would never agree to the division, unless under the aforementioned conditions. Lastly, they recall that another question is also being discussed in that parish, namely,

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whether the tithes (*guarise*) are to be collected, the majority of which currently come from St. Martin.

[*Latin ed. p. 665*]

CONCORDATIO. 665. The question arises whether the tithes are to be considered sacramental, or rather, parochial, or a mixture of both. However, whatever the case may be, according to the most recent law of the civil authority, they are to be abolished and replaced by a fixed pension, with this distinction: if the tithes are sacramental, then the political authority will establish the pension for the parish priest; but if they are parochial, then a financial contribution will be collected from each individual, proportionally according to the value of the tithes. Furthermore, they say, if the parochial title of St. Martin is abolished, then its rights will also cease, and it would not be surprising if, with the ancient benefit and its rights removed, both the royal treasury and private individuals would claim that their obligations also ceased, and that no one could be compelled to contribute for new parishes and their own rights, which was a right unique to the abolished church of St. Martin. These matters having been submitted to the examination of the Fathers, the following question was to be considered: Whether and how the decree of June 8, 1889, concerning the division of St. Martin of Asio and the division of new parishes, should be interpreted in this case. RESOLUTION. After discussion by the Sacred Congregation of the Council, on September 7, 1889, it was decided to respond: Affirmatively, in the sense that it applies to the division of revenues, while the ancient parish of St. Martin remains.

MAGNO-VARAMNEN. MARRIAGE. On January 25, 1890. Session 4, chapter 1. Concerning the marriage of Henrica Wurmbrand Stuppach, 16 years of age, without a suitable dowry, after parental consent.

COMPENDIUM OF THE FACTS.

[*Latin ed. p. 666*]

666 MA&NO-VARADINEN. The marriage, unlike one based on love, but rather on the mother's authority, did not deserve such a name, and in order to put an end to the troubles, and, as often happens, with the hope of changing the situation for the better, on October 9, 1881, Liber Baron Frederick Bors was married to her according to the Catholic rite, and she entered into married life with him. After the sacred rite was completed, and, as is the custom of the nobility, they set out on a journey; but, while they did not refuse, by mutual consent, to perform the duties of marriage from the very first night, the unfortunate woman clearly recognized that she would never be a mother. The woman's modesty, the man's reputation, the honor of the families, imposed silence: and although, from that night, the union of souls was impossible; nevertheless, the woman's economic and family

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circumstances were such that she had no escape, and whether she wished it or not, this one refuge was offered to her: either to remain with her husband, or to be exiled from her family and her homeland. Things remained this way until the year 1888, when Baroness Vay, the mother of Henrietta, moved by compassion, received the unfortunate woman into her home and placed her under her protection. Thus, having regained her freedom, which the woman had miserably lost for seven years, she was compelled to consider dissolving the bonds of marriage. To this end, compelled by civil law, she went to the civil court; which, however, dissolved Frederick from the bond of marriage, but, as a Catholic, Henrietta was referred to the forum to which she belonged, namely, the Episcopal Consistory of Magno-Varadinen. In the meantime, the civil judgment, issued on April 13, 1889, was confirmed in the court of Budapest and ratified on June 6 of the following year by the Royal Court of Hungary, as by the Supreme Tribunal. After all this, the Catholic woman appealed to the Most Reverend Bishop of Magno-Varadinen, who, without prior apostolic delegation, instituted a process concerning the non-consummation of the marriage, and regarding the causes for a dispensation, observing the essential provisions of the Benedictine Constitution "Dei miseratio," but omitting the hearing of witnesses, whom they call "seventh hand." Three doctors were chosen by the Tribunal, beforehand!

[*Latin ed. p. 667*]

MAGNOVAR ADINEN. 667. Ante unum iudicem, sub iuramento, corpus Henricae inspectum est, et integritas eius demonstrata est. Sententia pro mulieris favore pronuntiata est, et omnia acta ad Sacram Congregationem Consistoriam remissa sunt. Primo, die 18 huius, Decretum sanationis super defectu Delegationis Apostolicae obtinuitur. Deinde, postulatum est facultas proponendi causan, cum voto utriusque Consultoris, et observationibus Defensoris matrimonialis ex officio. Disceptatio synoptica sibi inquirenda esse, dixit is, nempe: I. Num constet de non consummatione matrimonii in casu? 2. Num constet de causis ad dispensandum in casu? Et ad 1. quod attinet, notum est generatim non consummationem matrimonii tribus probationibus demonstrari, scilicet iuramento partium, corporali mulieris inspectione, et depositione testium septimae manus. Quibus positis, inquit, inquirendo an et quomodo haec omnia in casu verificentur. Et primo, iuramentum de non habita consummatione a partibus iuridice emissum fuisse, acta demonstrant. Et non solum constat iuramentum emissum fuisse; sed insuper, talia haberi adiuncta sunt, ex quibus partium veracitas in hoc iuramento emittendo luce clarior evadat. Ambo enim fassi sunt se matrimoniali actui operam dedisse, et quidem libenter, sed frustra et inutiliter. Nemini autem dubium est quod si partes, et praesertim vir, mentiri voluissent, inutile nisum in matrimonialem actum siluissent, et potius se nunquam convenisse simpliciter asseruissent. Dixi: praesertim

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vir; licet enim vir catholicus non sit, eius tamen depositio magni facienda est, eo vel quia de re agatur, quae in eius dedecus redundat. Si igitur vir 1. non catholicus, 2. iam a matrimonii vinculo, civili lege, solutus, 3. in iudicium ecclesiasticum vocatus, rem contra seipsum manifestat, is certe verum dicere censendus est et omnem fidem meretur. Et si omnem fidem meretur dum asserit se ad mulierem accessisse, VOTUM THEOLOGI. DUO.

[*Latin ed. p. 668*]

In MAGNO-VARADIN, he is also worthy of belief, since he adds that this happened uselessly, without calling the woman into question. And this, from the man's perspective; but, on the woman's side, the Reverend Doctor Bishop is present, who does not hesitate to affirm the woman's sincere faith, and that it is greater than any exception. Therefore, from the first proof, it is clearly demonstrated that the marriage of Frederick with Henrietta was not consummated. As for the second proof, which is derived from the physical examination of the woman and from the existing physical signs of virginity, the Consultant admits that, in this matter, some things were found in the records that were not in conformity with the Benedictine Constitution, namely: 1. the examination was carried out immediately by expert physicians, and not by midwives; 2. the absence of a midwife; 3. silence regarding the use of those means, such as baths, which are prescribed to remove all doubt. However, 1. it is not new that sometimes the examination is carried out immediately by expert physicians, omitting the midwives, especially if there are special reasons, which in this case are to be considered as not lacking; for the woman feared that the midwives might lack sufficient knowledge to form a correct judgment, and therefore she preferred to be examined by expert physicians. Furthermore, it should be noted that the three selected to carry out the examination, besides having taken a legally sworn oath, were also all of the most skilled in the art of surgery, and therefore were most competent in this case, and especially the first, who was Doctor Marcus Konrad, Professor of the Institute of Obstetrics in the city of Magno-Varadin. Nor does 2. the absence of a midwife constitute an obstacle, for firstly, we do not know for certain whether she was truly absent, and furthermore, it is certain that the presence of a midwife is required to maintain modesty, but not to make the examination valid. Finally, 3. with regard to the means that are presumed to have not been used, the same must be said as above, namely, that it does not result from the records that they were used, but neither does it result that they were omitted. Furthermore, as we will see later, from the testimony of the examination, it is clearly evident that even if those means were omitted, there was no reason.

[*Latin ed. p. 669*]

MAGNO-YARADINEÑ. 66. A prejudice arises: for all these things are

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clearly observed, which were to be considered in this matter. Having stated these things, it is certain that the conclusions of the three doctors agree without any doubt, that they clearly demonstrate the attempted consummation of the marriage, but that it did not occur, and indeed, could not have occurred. Externally, the greater labia perfectly cover the lesser labia; and internally, of the six parts of the hymen, five are found intact: hence, the entrance of a man is absolutely impossible. Therefore, there is no doubt that the marriage, of which we are now speaking, was not consummated, and this is also clearly demonstrated by another proof. If anything is to be desired, it is certainly the testimony of a seventh person, which could not have been obtained. However, there are three things here which must be carefully considered, namely: 1. That the testimony of a seventh person, although absolutely necessary when the non-consummation of the marriage is demonstrated solely by the oath of the parties, nevertheless, if a physical examination has taken place, it becomes either useless, or at least superfluous. For what, I pray you, would the testimony of a seventh person prove against the veracity of the woman, when the physical integrity of her body proclaims her to be a virgin? Indeed, this testimony is wisely generally required by the Church, because the question may be whether it concerns a *vidua* (Culmore), or a corrupted woman. But when it is certainly established that the woman is physically a virgin, and when her physical integrity is found to be secure, can there be any doubt that the marriage was never consummated, simply because the witnesses are silent, and do not testify to the woman's veracity? The woman herself gives testimony, not indeed in words, but in deeds, and these deeds are recognized by experts, and indeed with such certainty, that any exception should be considered the greater. I confess, says she, that a physical examination does not provide a solid argument, when the state of her integrity appears doubtful, or when the experts are divided; but when the genital parts are so arranged internally and externally, that any intercourse with a man is absolutely impossible, precisely as in this case,

[*Latin ed. p. 670*]

670 MAGNO-VARAUINEN. I know not whether, through a lack of witnesses, the very integrity of the matter can be called into question. But perhaps the Defender of the Bond will say: Granted that the integrity of the woman remains proven through the examination of experts; but why omit the testimony of the seventh witness, when this is required by the law itself? Does not this reveal a hidden serpent in the herbs? Indeed, I myself would say this, were it not for a most serious reason for this omission: But from the records of the process, it appears that this occurred. For in the report to the Consistory, it is clearly stated that the testimony of the seventh witness was omitted, due to the most serious evils that could be feared from it. And indeed; for, as was noted in the second place, it must be known

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that the relatives of Frederick were so disposed towards Henrietta, and that they published a scandalous pamphlet under a pseudonym, in which Henrietta was accused of such things that her brothers, the publishers of the pamphlets, provoked one another to a singular contest. What, therefore, could be gathered from the testimony of such people regarding the truth of the matter? Should we not fear that singular contests would also arise from the depositions? And not only that: the relatives of Frederick are not Catholics. By what right, therefore, could they be summoned to judgment, when the civil law itself does not compel them to do so? Therefore, the Consistory acted prudently in omitting the testimony of the seventh witness. And even more prudently, because, as was noted in the third place, the aforementioned testimony of the seventh witness is supplied in this case by that complete agreement, not only in substance, but also in circumstances, which exists between the woman's assertion and the deposition of the experts. For the woman asserted two things, namely, the lack of consummation, and the lack of consummation following the act; and these two things are asserted by the experts, after examining and carefully questioning the parties. And since these are also repeated by the man, to whom it would have been fitting to remain silent, there is certainly no room for ambiguity. Finally, proceeding to another question, in which it is asked about the reasons why these seven witnesses may be dispensed with, he says that it is not required that they all agree at the same time. Principal.

[*Latin ed. p. 671*]

In Cattolica, on the 6th of March, in the year 1671, the following facts are presented: the impotence of one party, and the lack of full consent, are not sufficiently proven. For it is known that these causes, if legally proven, are of themselves sufficient to decree a dissolution based on justice. Therefore, their weight in persuading a dispensation, when they exist, is considerable, even if they have not been fully presented or proven. But this is precisely what happens in our case. Indeed, concerning the man's impotence, at least relative impotence, there is no one who doubts. This is indicated by fruitless attempts, voluntary separation, and prudent silence; so that from all the evidence, as well as from the famous document, a moral certainty arises regarding the prior impotence. Which, even if it cannot be brought forward to dissolve the marriage due to a lack of legal proof, can certainly be invoked to obtain a dispensation from the marriage. No less evident is the fear of revenge and the lack of full consent. For we know from the records of the process, and from the man's own confession, that arguments had already occurred between the betrothed before the marriage; and it is known to all that Henrietta yielded to the increasingly insistent persuasions of her mother; and, having endured considerable distress, and finally, with all help and counsel abandoned, and with her mind and heart protesting, she declared herself ready to marry Frederick, a most unfortunate event for all

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mortals. What then, most wise Judges? Are these not sufficient grounds to implore our Most Holy Lord for a benevolent dispensation? And would that these were enough! However, there are other factors, namely, aversion of the soul, the impossibility of reconciliation, and even the danger to the faith. For the records of the process clearly show that Frederick and Henrietta have such different natures that they experience no sympathy for each other, but rather are directed by completely opposite affections. Hence, although reconciliation has been attempted six times, it has never achieved a lasting effect. Indeed, considering human weakness, it is greatly to be feared that, if the dispensation is denied, and Henrietta is moved by the example of Frederick, who now enjoys the fullest freedom to contract other marriages, she herself will abandon Cattolica.

[*Latin ed. p. 672*]

MAGNO-VARADEN. 672 Lettere. Fides, quae non est continens, debet fulgere per ardor passionum.

OPINIO CANONISTAE. Cum in causis dispensationis a matrimonio tantum rato, non agatur de iure alterutrius partis, sed praecipue de sacramentali vinculo dissolvendo; hinc, dicitur, sapientissimae traditae essent normas per Constitutionem Benedictinam «Dei miseratione» et per «Instructionem S. C. C.» editam anno 1840. Necessarium est ostendere coniuges numquam sese carnaliter cognovisse. Cap. litterae 7, et cap. laudabilem 5, de frigiditate, et maleficia. Cap. super eo § de eo, qui cognovit, et S. C. C. iii, causa Dispensationis Matrimonii, die 14 Decembris 1878, et 25 Ianuarii 1879. Verum in proposito plura desiderantur ex iis, quae praescripta sunt ex citatis Constitutione et Instructione, ut patet ex narratione facti. Fortasse Episcopus, qui dicit se prae oculis habuisse dictam Constitutionem ad instar moniti, putavit eamdem praescribere normas pro causis tantum nullitatis, non vero etiam pro causis seu supplicationibus ad obtinendam dispensationem matrimonii rati. Cum enim de his dispensationibus loquitur Pontifex in dicta Constitutione § 15, aliter videtur statuere normas, diversas ab illis quas proposuerat circa validitatem vel nullitatem decernendam. At non recte; etenim etiam ante Constitutionem Benedictinam, causas dispensationis a matrimonio tantummodo rato ita moderata est Ecclesia, ut eadem omnino normae servarentur, quae in causis nullitatis servabantur. A tempore sane antiquo per inspectionem corporalem mulieris, per iuramentum coniugum, per iuratos testes seu septimam propinquorum manum ex utraque parte, matrimonii inconsummatio probatur. Testis est Cardinalis De Luca, Disc. 9 de matrim., num. 6. Servari igitur in hac causa debebat Constitutio Benedictina. Atque idem dicendum de Instructione S. C. C. anni 1840, etsi enim haec Instructio praecipue pro causis nullitatis ex capite impotentiae edita fuerit; tamen, cum in causis dispensationis matrimonii tantummodo rati fundamentaliter incidat in discussionem idem ipsum subiectum, inconsummationis; clarum fit eamdem Instructionem

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esse.

[*Latin ed. p. 673*]

MAGNO-YARADINEN. 673, always to be employed. Continuous practice confirms this: whenever a process concerning the lack of consummation of marriage is submitted to a Bishop for the purpose of obtaining a dispensation, it is always stated, "observing the form of the Constitution of Benedict XIV, and according to the norms of the Instruction of the Sacred Congregation of the Council, 1840." The Bishop could also follow another, shorter and more convenient form in conducting the process. This is widely found among reputable authors, and is worded as follows: "The Instruction of the Supreme Congregation of the Holy Office to be followed in conducting the process concerning the impotence of a man and the lack of consummation of marriage, with the dispensation of the Supreme Pontiff, must be observed with careful attention to the prescriptions of the Bull of Benedict XIV, *Diffidamus Miseratione*, while still observing the essential elements." Among these essential elements, this Instruction, in addition to the examination of the body and the sworn testimony of the spouses, lists the examination of witnesses, among whom the parents come first, as they are presumed to be more informed, followed by servants and neighbors. However, in this matter, neither the Bishop nor his delegated commission have been concerned with these. Nevertheless, these things have been said only to explain the first part of the purpose of this rescript, namely: "regarding the prior examination of the facts."

Turning more closely to the matter at hand, the consulter must consult with the Most Holy Father regarding the dispensation. Three things must be considered here: 1. The power of the Roman Pontiff to grant these dispensations; 2. The arguments by which the lack of consummation is clearly demonstrated; 3. The just and weighty causes for the dispensation. Pignatelli, 1.1, cons. 148, n. 3 and following; Ursaya, vol. 3, p. 1, discussion 3, n. 4 and 99; Cardinal De Luca, *De Matrimonio*, discussion 9, n. 6, 7, 15; Fagnani, in the harmful chapter on the office of the ordinary judge, n. 61; and the Sacred Congregation of the Council, throughout. Regarding the first point, namely the power of the Roman Pontiff, there is scarcely a need to speak; it would be superfluous, and even impious, to question it, since both theologians and canonists universally admit it. Pignatelli, *loc. cit.*, n. 44, and more fully, Leurenius, book 4, title 19, on divorces, question 276. But, as the *Acta*, vol. XXII, page 613, 43...

[*Latin ed. p. 674*]

6 74 MAGNO—VAR ADINEN. Most importantly, the Roman Pontiffs have repeatedly confirmed this very thing by their own example. Therefore, in our matter, there can be no doubt about the power of the Roman Pontiff to dispense. But now we must consider: whether the arguments

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regarding the lack of consummation are clear; for in this lies the entire force of the present question. Indeed, the arguments will be clear if it can be demonstrated that there are in Henrietta physical characteristics and signs, entirely certain and evident, of perfect virginity; if the proof arising from this is confirmed by the sworn confession of both spouses that the marriage was not consummated; and finally, if equivalent weight is given to the testimony of seven witnesses. Unless these arguments, considered together, are clear, one must despair of being able to prove that the marriage was not consummated; which, however, is excluded by both the practice of the tribunals and by the very law of the Church. Let us therefore consider the signs of virginity in Henrietta. I will not repeat all the words of the experts; I will only recall the last: "Following these observations, we testify that in Henrietta we found only the sign that a consummation of marriage was attempted, while her virginity remained perfectly intact, and consequently, the marriage was not consummated." The signs that the experts found and described are precisely those that can be present in a woman and which are entirely consistent with the existence of virginity. I will not linger on the opinion defended, especially by the doctors of our time, regarding the possibility of consummating a marriage while the woman remains a virgin. The criterion for judging about consummation must be derived from the words: "And they two shall be in one flesh. Therefore now they are not two, but one flesh." However, according to the constant practice of the ecclesiastical tribunals, it must be judged that the spouses were not "one flesh" if it is established from physical or moral circumstances that the marriage could not have been perfected according to the common order of nature. And for this very reason, the Church has granted a three-year period as a physical and sufficient argument of proof. Since this is the Church's practice regarding the judgment of consummation, it follows that...

[*Latin ed. p. 675*]

IN GREAT MEASURE, THEREFORE, the matter is this: In *benda*, the law defines the meaning of those words, "two in one flesh." Therefore, since the signs of virginity remained in Henrica, a valid argument is presented to prove that the marriage was consummated in her. But you will say: Henrica was not bathed, so that there was no possibility of deception through artificial virginity, nor were midwives called. But the response is: a bath is not necessary to detect deceptions; and indeed, the cited Instruction of the Holy Office states, "If a bath of the woman is used beforehand, if it seems necessary to the judgment of physicians." In this case, the physicians judged that it was not necessary to use a bath. If midwives were absent, who are otherwise called only out of modesty for the woman who must be examined, this does not affect the substance of the matter, because Henrica trusted more in the skill of the doctors than in the experience of women. You will insist: the signs of virginity are deceptive; therefore, the marriage

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should not be dissolved, which may already have been consummated. But it is certainly true that the signs of virginity are often deceptive; but not always. In the present case, however, the circumstances are such that they exclude any reason for doubt. And indeed: I am not here assuming the role of an expert physician, but I will follow the judgment of judicial experts, said the consultant, "the hymen is not always found or visible in the genitals of women, so that some ancient physicians doubted even its existence in any woman." But, assuming that in Henrica the hymen was so evident that the crescent shape was visible and the part intact, how could a man have penetrated? From the small opening found in it, it can only be said that the consummation was attempted, but that virginity remained perfectly intact. Let Zacharias be heard, *Quaestiones Medico-Legales*, Book 4, Title 2, Question 1, paragraph 1: "Many things are brought forward, with which, if present, there can be no doubt about the integrity of virginity, especially that which seems to be an infallible and inseparable sign taken from the hymen." Let Bartholomew also be heard, *Institutiones Anatomicae*, Book 1, Chapter 81: "The hymen is called by others the virginal closure, also the flower of virginity, because when it is present, it is a sign of virginity."

[*Latin ed. p. 676*]

676 MAGNO-VARADEN. Authors such as Taihmeyer in *Institutiones medicae legales*, cap. 4, quaest. 3; Barzellotti in *Questiones de medicina legale*, vol. 1, lib. 1, cap. 5; and others, relate this. It is not permissible to doubt the knowledge and integrity of the medical experts who examined Henrietta; for it is reported that they were Catholics, sworn to an oath, of whom the Bishop said, "whose intellectual cultivation and expertise in the medical art, as far as is permissible to say in human matters, remove all fear of error." The first of the three experts is said to be a "truly Catholic" professor of the Royal Hungarian Institute of Obstetrics in Magno-Varaden. The second is said to be a renowned Roman Catholic, the leading physician of the Comitatus Bihariensis Hospital. The third is also a Roman Catholic, and for a decade has been the protomedicus of the City of Magno-Varaden. However: although the signs of Henrietta's virginity may indeed be deceptive, it does not necessarily follow that she has not proven the consummation of her marriage. And indeed, in order that the integrity of the woman may be the reason and foundation for the papal dispensation, it is required that she prove it through a sworn confession of the spouses, and also through witnesses; Gregory VIII, cap. Proposuisti 4, on proof. - there - "The woman declared that she had not known the man, nor could she have known him: which she proved both by her own proper oath, and by the testimony of seven women, who, by examining her body, affirmed that she was a virgin, contrary to the man's assertion made under oath. It seems to Us, therefore, that the faith should be given more weight to the girl's oath and the testimony of those seven women." Indeed,

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Henrietta gave her oath, and the groom did not contradict, as in the case of a joined head, but rather with his own consent and oath. Witnesses were also presented who had examined her body, namely, the aforementioned medical experts. The Pope seems to recognize the full force of proof in the woman's oath. Nor did the Holy See judge otherwise; for it is possible to obtain a dispensation even without an examination of the body, but with the woman's oath, and with witnesses. Thus, the Holy See considered it advisable to consult in the matter of the marriage on March 28, 1857, and on June 26, 1858. - The case concerned a noble man, whose wife was opposed to marital relations.

[*Latin ed. p. 677*]

MAGNO-VARADINEN. 677 constantly venerated. It was not possible to conduct a physical examination of the woman herself, because she had stubbornly refused. Spondenus, in the *Ecclesiastical Annals*, in the year 1599, states that the marital bond has sometimes been relaxed solely on the basis of the woman's oath, and the decisions of the Holy Office provide examples, especially in Ensingen, 1817, and in Gandaven, 1820. A recent decision was also issued in Varsavien, on May 14, 1887. But it will be said: in this case, there is a lack of *septima manus* (seventh hand). However: The Bishop states in his report: "Since those who have judged the compelling force of this proof, regarding the examination of physicians, to be incapable of putting it beyond doubt, I considered it necessary to disregard the reception of the deposition of *septima manus* from relatives or other witnesses, to which I was already led by other reasons; which consist of the difficulty of examining the Protestant relatives of Frederick. And what, indeed, is the purpose of *septima manus*, if not to make the sworn testimony of the woman credible? Witnesses of *septima manus* must testify that the spouses are incapable of lying and perjury, and that they believe them to have spoken the truth. In this matter, the Bishop himself is present, who, in substance, makes up for the deficiencies of other witnesses; for he says: "First, there is a corporal oath given by both parties regarding the lack of consummation of the marriage, to which oath, greater weight is given, because of the moral and social standing of both, and especially because of the sincere and unwavering adherence of Henrietta to the Catholic faith, which excludes any shadow of suspicion or bad faith. " Therefore, in our case, there are most evident arguments which, from their totality, provide moral certainty regarding the lack of consummation of the marriage; and these are derived from physical signs, confirmed by the sworn confession of the spouses, and, equivalently and in substance, confirmed by *septima manus*. Now, let us finally consider the reasons for granting the dispensa-

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tion. The first reason among these is coercion, which Henrietta suffered.

[*Latin ed. p. 678*]

678. MAGNO-VARADINEN. From her mother. It is clearly understood why a noblewoman, though relatively poor, compelled her daughter, who was only ten and seven years old, to enter into marriage with a man who was very wealthy. But Henrica was never able to love the man, due to the excessive disparity in their ages, and she also reproached him. "During the betrothal," the unfortunate Henrica stated in her petition to the Bishop, "I noticed a significant difference in our ages, and other things in the bridegroom that increased my antipathy. Considering that I am considered the most unhappy of mortals, and that these circumstances continue to change for the worse, I have done what I could: I warned the bridegroom to abandon his intentions, and I repeatedly begged my mother and relatives to intervene, but to no avail." If these reasons were sufficient for nullity due to a lack of consent, I believe they are even more sufficient for a dispensation. Sánchez, book 2, chapter 6, reports that Eugene III granted a dispensation from marriage solely because of hatred that had arisen between the spouses. The aversion of the heart, in our case, is so great that repeated attempts at reconciliation have always failed. This, however, is a serious reason for granting a dispensation, as stated by Sánchez, *De Matrimonio*, book 2, chapter 16, paragraph 3, and by Corradus, *In Praxi Dispens.*, book 8, chapter 7, paragraph 33, who says, "This aversion of the heart is one of the most important reasons that justify a dispensation." *S. C. C. in Causa disp. matr.*, April 26, 1879. I do not believe that the reason for a dispensation arising from a marriage that was attempted, but not consummated, should be overlooked. Perhaps, due to the husband's shameful addiction, it was not possible. Let Henrica be heard in her petition to the Bishop: "Therefore, after eight days had passed... one night during this time, the husband attempted to enter the bridal chamber with the intention of using his marital rights. Expert doctors are witnesses that I remained a virgin after that night. Moreover, especially since I have observed in him various sordid habits that provoke abomination, the discord between us has increased more and more; and because we were so dissolute, both morally and emotionally, the physical act was..."

[*Latin ed. p. 679*]

MAGNO-VARADINEN. 679 Concerning the consummation of marriage. "And it must also be noted that greater proofs are required to demonstrate impotence, so that no marriage may be declared null, than are required to prove the lack of consummation in order to obtain a dispensation. Probable impotence, for the purpose of obtaining a just dispensation, is established according to Cosci, book 1, chapter 16, paragraph 197, and book 3, chapter 2, paragraph 386. Sánchez agrees with this in book 2, dispute 16, paragraph

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6. Pignatelli, Consultations, 148, paragraph 14, volume 4. Cardinal De Luca, discourse 7, paragraph 7, On Marriage. The Sacred Congregation of Councils, in Naples, regarding nullities or dispensations of marriage, July 5, 1862, § Causes. Finally, among the principal causes for a dispensation, is added the danger to the soul. Her betrothed, according to the laws of the country and the judgment rendered in the matter, may enter into marriage with others; while she, by reason of her Catholic faith, remains perpetually bound to him. She has attempted several times to abandon the Catholic religion, so that, with equal right as the betrothed, she may enter into marriage with others. And if she has, up to now, remained steadfast in her faith, namely until the age of twenty-five; who can ever predict what she will do in the future? Many more things could be added on this subject, but they are more easily conceived than expressed. Furthermore, if anything has been omitted in the course of the proceedings, it is not of such a nature that it cannot be remedied, because there are ecclesiastical laws that require certain things to be done in order to complete the process. And all the more should a dispensation be granted, because not only the woman implores it, but also the man consents to it. Therefore, it concludes, it is sometimes expedient to relax the bonds of the law; for the Council of Trent, Session 25, chapter 18, on reform, states: 'Wherefore, let all know that the most sacred Canons must be observed by all. And if urgent reason and, at times, greater utility require that dispensations be granted in some cases, this must be done with known cause and with the utmost deliberation.'

NOTES OF THE DEFENDER OF THE MARRIAGE. The marriage, which, on October 9, 1881, Countess Henrica Wurmbrand, a Catholic, aged 17, contracted with Baron Frederick Bors, a non-Catholic, aged 42.

[*Latin ed. p. 680*]

680. MAGNO-VARADEN. Born, after a period of five years of married life, declares the marriage to be imperfect. Two most learned consultants, summoned by the Sacred Congregation of the Council to deliberate, although they acknowledge that the proceedings are tainted by very grave vices, nevertheless believe that the matter pertains to the lack of consummation of the marriage, and to just causes for a dispensation concerning a valid marriage. But this is undeserved. Indeed, the testimony of a seventh witness is required, which in the present case is absolutely necessary for judging whether the marriage has been consummated, according to the provisions of chapter *Laudabilem*, 5, concerning frigidity and impotence (there). However, both spouses declare that they have never known each other, and, with a seventh witness, either of relatives or of neighbors of good reputation, if relatives are lacking, each, by oath, shall swear according to the sacred Gospels that they have never become one flesh through carnal intercourse; and then it seems that the woman may be validly married a second time. Following this legal provision, Sánchez, in his work

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De Matrimonio, book 7, disputation 108, number 7 and following, states: "However, beyond that three-year period, the oath of both spouses confessing the impediment is also required, so that a seventh witness, either of relatives or of neighbors of good reputation, if relatives are lacking, may swear. Because the text of chapter *Laudabilem*, concerning frigidity and impotence, demands this... And furthermore, because an oath is required, it is so that there may be no collusion between the spouses, and that, with greater diligence, the dissolution of the marriage may be effected. This matter is of the greatest importance..." Therefore, why does the *Glossa* of chapter *Requisiti*, word *septima*, manuscript 33, question 1, say that when a woman is found to be a virgin by appearance, it is not necessary for the oath of a seventh witness of relatives, but that the true judgment is through the oath of matrons and of the spouses themselves? Fulvius Pacianus, Sotus, and Ledesma hold the same opinion, who seem to require the oath of relatives only when the woman is corrupt, and therefore it cannot be established by appearance alone that the marriage has not been consummated. "But the Doctors hold the contrary expressly."

[*Latin ed. p. 681*]

MAGNO-VARADEN. 681. Quorum numerum in praecedenti loco allegavi, affirmant semper hoc iuramentum desiderari, quando impotentia non est evidens: quod hic contingit: nam saepe oculi et manus obstetricum falluntur: eo vel maxime quod feminae multis fraudibus utuntur, quibus virgines apparent. Huc adjicitur quod specimen ipsum in Henricae corpore ita peractum est, ut ne nomen quidem speciminis mereatur. Balneum tepentis aquae ad detegendas fraudes, quibus mulieres virginitatem simulare possunt, ad corpus perlustrationi praemissum, minime est, Henricae corpus non obstetrices iuxta naturalis et ecclesiasticae legis praescriptum, sed tres medici recognoverunt: iique non seorsim, prouti sancitum pariter est, sed una simul corpus Henricae inspexerunt, una simul absolutae inspectionis relationem scriptam ediderant: orali examini in iudicio medici cognitores haud supposititi sunt. Et quod gravius etiam est: periti non omnia sed nonnulla solummodo signa ad virginitatem dignoscendam observarunt, quod quam maxime attendendum fore perspicuum est. Quae cum ita sint, piaculum etiam putat de dispensandi causis verba facere: et proin, haud interiecta mora, ad suprascriptum dubium « An sit consulendum SSmmo pro dispensatione super matrimonio rato et non consummato in casu ; responsum postulat consultor : Negative. » Quibus animadversis, propositum fuit enodandum Dubium An sit consulendum SSmmo super dispensatione a matrimonio rato et non consummato iii casu. RESOLUTIO. Sacra C. C. re discussa sub die 25 Ianuarii 1890 censuit

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respondere: Attentis omnibus, et praevia sanatione actorum, affirmative.

[*Latin ed. p. 682*]

682 AVERSA: Regarding the Commutation of Wills. January 15, 1890. Through a summary of prayers. SUMMARY OF THE CASE. Nicholas Beneduce, in his will of the year 1855, established his wife, Saveria Ucciero, as his universal heir, under the condition that daily Mass be celebrated from the revenues of one farm at the altar of the Blessed Virgin Mary in the parish of Pantano; and that a respectable sustenance be provided for the widow; and after her death, or if she were to enter into a second marriage, all the goods should be returned to the parish priest and constituted as a bequest for Masses. Furthermore, Saveria Ucciero, upon her death, named her brother, Nicholas, as her universal heir; who, for several years, arranged for the celebration of many Masses; but the hereditary goods of Nicholas Beneduce, which, according to the will of the aforementioned Nicholas, were to be transferred to the parish priest for the purpose of the bequest, were in no way relinquished. After his death, for some time, one of his sons, who is a priest, was accustomed to celebrate Mass twice a week in satisfaction of these obligations. Now, however, he, along with his brothers and mother, are present and imploring that the rural properties of Nicholas Beneduce may be allowed to remain with them, provided they exhibit a sum of 10,000 livres, which they promise to pay to the Bishop in convenient installments. The parish priest, when asked about the matter, has nothing to object. The Bishop, after a proper examination, has determined that all the goods bequeathed to the Church by Beneduce amount to 18,200 livres, of which the income could be 1,000 livres; and he has decided that the requested grace should be granted: for the petitioners do not enjoy other stable possessions, and therefore, if these were taken away or lost, they would live very meagerly.

[*Latin ed. p. 683*]

AVERSANA 683. Disputation concerning Supplications. On one hand, against the supplications, there stands the detriment to the Church and the defrauding of pious intent: for almost half of the goods would be withdrawn from the prescribed purpose, or from the celebration of Masses, and granted to the support of the family, not even of the founder himself; which does not seem equitable, as noted in the laws, in can. 4, *Ultima voluntas*, cause 3, question 2, and in Clement V, *Quia contingit De religiosis domibus*, and elsewhere, which proclaim this clearly. Furthermore, the supplicants would require apostolic permission to retain the goods of Beneduce, and they would also need absolution concerning the past, due to the omission of so many Masses; and yet, concerning this, not a word is found in the supplications. But, conversely, if the supplicants are not related by blood to Nicholas Beneduce, they are nevertheless close

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relatives of his wife, to whom he granted all his goods as a fideicommissum inheritance; and to whom, it seems, he did not forbid the alienation of goods or the diminution of her inheritance. Therefore, if the hereditary right of Nicholas Beneduce is still intact, it should rightfully be claimed by Saveria Ucciero and her family, and it would not be improper to allege this as a reason for grace. Furthermore, the Ucciero family can be considered to be related to the legacy of Beneduce as patrons. But to patrons in need, assistance is not usually denied, indeed, it is rightfully granted to them; hence, this grace, which seems to be a form of assistance, should also be granted to the supplicants, who, having been deprived of the goods of Beneduce, would certainly be poor. It would be harsh to demand the full extent of their legal rights and to deprive them of all their goods. Considering these matters, the question arose as to how the supplications should be decided. RESOLUTION. The Sacred Congregation, having considered the matter on January 25th, decided that the following should be answered: With prior absolution concerning the past, after the celebration of a certain number of Masses, for the sake of obtaining a dispensation, let the following be paid, with a light hand, in three annual installments, ten thousand livres each, to be cautiously and usefully investigated by the Ordinary, in favor of the pious cause, and let the matter be communicated to the Most Holy.

[*Latin ed. p. 684*]

684 ELNE. CANONICAL. March 29, 1890. Session 24, chapter 2, concerning reforms. SUMMARY OF THE MATTER. The Bishop of Elne recently sent these letters to the Sacred Congregation of the Council: "The condition of the cathedral chapter of Elne causes me great concern and sadness. This chapter is regularly constituted of eight canons. Three have died; two are suffering from a serious and incurable illness and are unable to perform their duties. The other three, with advancing age, are already lacking in strength." "In these difficult circumstances, I considered it prudent to follow the example of many Bishops of France. Following their example, and after obtaining the approval of the civil government, which requires the payment of the due and legitimate salary, even though it refuses to pay it, I proposed the nomination of three priests who are commendable for their knowledge and piety: one is the master of sacred scripture at the major seminary, and the third is the chancellor of our episcopal curia." "My proposal was accepted by the civil government. "But alas! The condition of canons without salary, without any endowment, is a new one. For there is no endowment in the cathedral church of Elne. Concerning this condition, I believe that nothing is established by law. Therefore, I humbly submit these questions to the Sacred Congregation of Cardinals Interpreters of the Council of Trent." "1. Are canons, nominated without salary from the civil government and without any endowment, to be considered as true canons?" "2. Do they enjoy all the rights and privileges pertaining to the

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canonry, both when the episcopal see is filled and when it is vacant?" "3. Are they bound by the strict and conscientious obligations of: 1. residence; 2. choral service; 3. the application of Masses for the founders?"

[*Latin ed. p. 685*]

"Concerning the canons, 685, and their benefactors; 4. Are there other obligations to which those receiving a canonical stipend or the fruits of a benefice are bound?" "In order that these doubts may be resolved by the Holy Congregation of Councils, given the pressing circumstances, I humbly request it." "Furthermore, if a positive answer is given to the proposed doubts, it seems just that the obligations of the canons, those recently elected and those to be elected later, should be remitted as long as they lack a stipend and benefice. They are indeed willing to bear the burdens of the canons spontaneously and diligently, as far as circumstances and other duties permit, but they do not wish to burden their consciences by being strictly obligated." "On the one hand, the canons' obligations may sometimes be fulfilled with difficulty, and especially not without prejudice to their own proper duties." "On the other hand, these duties, which they perform for the good of the diocese, are, as it were, subject to revocation, and the stipend or honorarium attached to them is modest." "Therefore, in order to safeguard the tranquility of consciences, and to ensure that the burdens maintain a just proportion with the rights earned, I humbly request the Holy See to grant, with benevolence, to the canons, those recently elected and those to be elected later, as long as these adverse circumstances persist and they lack a benefice, a dispensation so that they are not strictly and in conscience bound by the obligations of canons who enjoy a benefice, especially concerning the choral service and the application of Masses for benefactors."

Synopsis of Discussion

"It has been observed that the term 'canon' properly implies a certain spiritual right, which arises from election and reception into the brotherhood or canonry, as is explained in chapter 9, *De Constitutionibus*, and as jurists generally teach. This spiritual right which the canonry confers consists first in the right to have a seat in the choir and a voice in the chapter, and secondly, and subordinately, it requires that, as soon as possible, they..."

[*Latin ed. p. 686*]

686. If a cleric is admitted to a canonry, and holds that same canonry, let the prebend, or the appropriate portion of the fruits of the canonry, also be conferred upon him; "for it is not fitting that one should lack the prebend who is known to be received into the canonry." – as is stated in chapter 9, *Relatum de praebendis*, which agrees with canon 19 of *Dilectus* in the same title, and canon 9 of *De constitutionibus*. Therefore, if some-

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one is simply admitted to a canonry, before he obtains the canonical revenues, or before they are conferred upon him, he is said to *have* a canonry or a canonicate, but not yet a prebend; for the prebend further implies the right to receive the annual fruits of the canonry, or other dues arising from the canonical title. Hence, he who has both is called a canon with a prebend. See *C. Sanctorum*, 2 distinct., 70. These are the fundamentals, and they are readily applied to canonical coadjutors, who are true canons, even though they may lack any prebend. Therefore, there appears to be nothing to prevent canonically elected canons, received into the brotherhood, from being considered true canons, and from enjoying all the rights and privileges pertaining to a canonry, both when the position is filled and when it is vacant, even if, through the fault of the times, they have been deprived of some stipend or prebend. Indeed, if this lack of stipend and prebend arises from the emulation of civil government, through violence, and unjustly introduced, it should, all the more, be considered as nothing; as the most well-known principles of law suggest, in *reg. in V Decret*, and in 64 of *VI iuncta leg.*, chapter. For in ecclesiastical law, it cannot be admitted that, because the government unjustly withholds pensions, or diminishes them, or is in arrears in payment, the rights and privileges of canons should also cease, or that the Church should be prevented from validly and effectively conferring titles and offices, even though they are lacking in temporal support, with regard to spiritual matters. For the Church does not depend on the state, nor are its spiritual duties so connected with temporal matters that, if the latter are lacking, it cannot perform the former. Now, concerning another point of the petition, namely, whether canons of this kind, who are without a prebend, are bound by duties and obligations to the same extent as those who have a prebend,

[*Latin ed. p. 687*]

ELNEN. 687. The question is not without difficulty. For, in general, it is true what is taught in rule 55 of the sixth book of Jurisprudence, namely, "he who feels the burden ought to enjoy the benefit, and the reverse"; and therefore, it may seem harsh, and altogether contrary to canonical equity, to impose certain obligations of grave and continuous canonical service upon someone without any reciprocal, temporary compensation. And this is even more so if it is considered that many of these services are not intimately connected with the canonical state, but are added as if by contract, and are undertaken because of various offerings and bequests made by the faithful. Therefore, it would seem just that, once the temporal benefit is removed, the obligation of spiritual service should also cease. And indeed, both civil law in the aforementioned passage of the Code of Civil Law, and canonical jurisprudence, and even the Council of Trent in several places, seem to suggest this with a more equitable judgment. But, on the other hand, although canonical benefices may be lacking, nevertheless,

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some honor and preeminence are obtained, which should be valued, since sometimes they also bring a particular advantage; and furthermore, many canonical offices seem so closely connected with the canonical state that, by accepting the title itself, these services seem to be undertaken, and therefore, the canons can be said to be bound to them, at least by reason of the agreement; and finally, some duties are such that, although they constitute a burden, such as the administration of a diocese during a vacancy of the episcopal see, they are nevertheless required for the public good, so that they cannot be dispensed with, nor can the canons be relieved of them; hence, it seems that neither the chapter, nor the canons, nor perhaps the Ordinaries, can, of their own accord, limit and reduce canonical obligations, but rather they must appeal to the Holy See, as Benedict XIV decreed in the Constitution *Cum semper oblatas*, concerning the reduction of the conventual Mass, due to a decrease in revenues. With these considerations in mind, the following questions have been proposed: I. Whether canons who are appointed without a benefice and without a stipend, should be considered true canons in such a case. II. Whether all the rights and privileges pertaining to the canonical state are conferred upon them.

[*Latin ed. p. 688*]

688. Concerning those who belong to the chapter, whether the episcopal see is filled or vacant, they shall enjoy the benefits in either case. III. Whether they are strictly and conscientiously bound to residence, to choral service, to the application of Masses, to contributions for the support of the chapter, and to other duties "which are to be provided by the canons, according to what is given," in either case. And to what extent. IV. Whether and in what manner there is a place for remission and reduction of these obligations in either case. RESOLUTION. The Sacred Congregation, having considered the matter on March 29, 1890, decided to respond: To I. Affirmative. To II. Affirmative. To III. It will be provided in IV. To IV. The Bishop, with the necessary faculties, so that, if the circumstances persist, he may, according to his conscience, dispense from the obligation of applying the conventual Mass and reduce the obligations of residence and choral service to more solemn days and others that he deems fitting, after having consulted with the Most Reverend. FROM WHICH WE MAY GATHER: I. That canonically elected canons, even if they lack endowments and stipends, are to be considered true canons; so that they may enjoy all the rights and privileges that belong to the canonry, whether the see is filled or vacant, and are burdened with all the obligations inherent in the same canonry. FROM THE HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS OF HILDESHEIM, OR SOUTHW ARCEN. CONCERNING RESTITUTION OR COMPENSATION. Dated March 7, 1890. SUMMARY OF THE CASE. In the city of Duderstadt, located in the diocese of Hildesheim, in the Kingdom of Prussia, a monastery of nuns of Saint Ursula was built and endowed

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with real estate.

[*Latin ed. p. 689*]

HILDESHEIM. OR SOUTHWARK. In the year 689, it came to an end, as it was known that young girls of the city were being educated there. This monastery flourished so much that in the year 1857, the nuns founded a new monastery in the city of Hildesheim and a branch house in Hanover. However, due to unfavorable laws promulgated on May 31, 1875, the nuns of Hildesheim were forced to leave and exile themselves to the village of B auf f e, which is located in the Kingdom of Belgium, taking with them all their possessions, which amounted to approximately 200,000 thalers. Meanwhile, the nuns living in the city of Duderstadt, fearing that the same thing would happen to them, sold the monastery to the city's magistrate for the sum of 40,000 marks; and not content with this, they also attempted to alienate other property. However, they were unable to achieve this, because the government, knowing that the assets were inalienable, since they were intended for the education of the city's girls, first prohibited the attempted sale, and then expelled the nuns from the monastery. The nuns, driven from their own home, fled to England, and specifically to the town of Greenwich, in the diocese of Southwark. But things could not remain in this state for long; for, except for two Religious from the Duderstadt monastery, to whom later others from Ireland and Germany were added, all the others, abandoning the monastery of Greenioich, went to Australia. Things were in this state when, in the year 1887, another law was enacted, according to which congregations of nuns dedicated to the education of girls were granted the right to return to their homeland. The Bishop of Hildesheim, adhering to this law, immediately recalled the nuns called after Saint Ursula; but since he could not return the three old houses to them, he made a vow that, with funds provided, they should acquire the Duderstadt monastery and devote themselves to the instruction of girls there. The nuns who were in B auf f e, of whom twelve had obtained permission to teach from the government, agreed to the Bishop's vow; but the nuns who were living in Armídale (Australia) refused.

[*Latin ed. p. 690*]

690. THE ABBESSES OF HILDESHEIM, OR SOUTHWARK, agreed that, in order to fulfill this obligation, the Ursuline nuns from B [presumably referring to a specific location or order] should be recalled. The Ursuline nuns, residing in Greenwich, without the knowledge of the Bishop, sent a letter both to the Royal Government and to the Municipality, declaring that they wished to re-establish the Convent of Duderstadt. However, their wishes were not fulfilled, because only two of them were born in Germany and possessed the ability to teach, and the Government granted them permission. Under these circumstances, the Bishop assigned the Convent of

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Duderstadt to the nuns of B, who had acquired it from the Municipality, having paid the agreed sum. Regarding the nuns residing in Greenwich, he arranged that they should be received into a new Convent, if they wished, as Sisters, but with the condition that they bring their own dowries with them. Finally, concerning the properties, which, being inalienable, could not be sold, he decreed that the income from their lease should be paid to the former nuns who were dependent in the Convent of Duderstadt, as long as they lived, for their support; but with the stipulation that the property should belong to the Convent, and that it could only benefit from the income from such properties when all the former nuns of Duderstadt were deceased. This decision of the Bishop led the Ursuline nuns in Greenwich to believe that their rights had been violated, and they sent a memorandum to the Bishops of Wratislaw and Hildesheim, in which, after stating the reasons concerning the rightful claim to the property of their Convent, they declared that they could not allow either the Community of B or any other Community of Duderstadt to seize possession of the Convent and its assets. However, since they were unable to dissuade the Bishop of Hildesheim, they presented a petition to the Holy See, outlining the situation and requesting the following: 1. That they be allowed to enter into possession of the Convent of Duderstadt and all the properties belonging to it; and 2. If this was not possible, that the money be returned by the Government.

[*Latin ed. p. 691*]

HILDESHEIM. OR SOUTHW ARCEN. In the year 691, it was decreed that [certain things] should be given to them, because they, and not others, represented the ancient Community of Duderstadt: 3. That, whether from lands restored, or the price if they were sold, or the revenue if they were let, these things should be given to them, together with an annual payment to be paid by those Religious [persons] to whom the Convent of Duderstadt was assigned. A concise summary: WHAT APPEARS TO FAVOR THE NUNS OF GREENWICH. The nuns of Greenwich, in defending their rights, primarily point out that the sale of the convent was not undertaken voluntarily and freely, but was compelled by force and by circumstances, and therefore they never lost hope of recovering the convent's possession, should the laws against religious houses promulgated by the Government ever be repealed. Since, therefore, after ten years, such laws were indeed repealed, they contend that, spontaneously, they, rather than other religious [persons], should be admitted to the possession of the convent, and of all the goods belonging to it, concerning which they never relinquished their rights, even though such goods were assigned for the instruction of girls. Therefore, it does not seem equitable or just that they should be subjected to others, for this single reason, that these others were admitted to the possession of the convent earlier in the dispute. Especially since it is a fact that this did not happen through the fault of the nuns of Greenwich, but

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through the fault of the Government, and of the Municipality, who were unwilling to heed the petitions in which they requested the possession of both the convent and the goods belonging to the convent. Nor does the much-vaunted difficulty have any force, namely, that the nuns of Greenwich are lacking the ability to provide instruction for girls. They say that this difficulty is not so grave as to be able to deprive them of the rights which they have enjoyed for almost two centuries. And even more so, because such a difficulty would soon vanish into thin air, since...

[*Latin ed. p. 692*]

692 HILDESHEIM. OR SOUTHWARK. A monastic community is already in the process of being established, which has obtained the approval required by the government for the instruction of girls, and several others are present which could quickly obtain such approval; meanwhile, it could conveniently be supplemented by secular instructors. Considering these and other matters, the nuns of Greenwich are seeking to have the Convent of Duderstadt and its property assigned to them. And this assignment, besides benefiting the nuns of Greenwich, would also be advantageous to the Religious in Australia; for there exists an agreement whereby it is stipulated that, in the event that the property of the Convent of Duderstadt could be recovered, it should be divided equally between the two communities, since the Religious residing in Australia are not to be considered to have lost the rights which they and the nuns of Greenwich formerly held over such a monastery and its property. WHAT APPEARS TO FAVOR THE BISHOP OF HILDESHEIM. On the other hand, the Bishop of Hildesheim, after stating that the Convent of Duderstadt was divided in the year 1882, and that two entirely new convents arose from it, namely, the Convent of the Ursulines in Greenwich (England) and in Armidale (Australia): after stating that the Convent of Duderstadt, as a single convent, ceased to exist, and that neither the one in Armidale nor the other in Greenwich can claim to be the Convent of Duderstadt; he maintains that no right whatsoever pertains to the nuns of Greenwich, either with regard to the monastery of Duderstadt, or with regard to its property. Indeed, with regard to the monastery, because the nuns sold it to the civil authorities of the city of Duderstadt, with the consent of ecclesiastical authority, reserving the right to redeem the monastery. And such a contract of sale is to be considered as having been perfected, and therefore must exercise its force, even though the price has not reached the hands of the nuns, but has been obtained by the government; because, on the part of the nuns, the consent of ecclesiastical authority was added. It has been explored in law.

[*Latin ed. p. 693*]

HILDESHEIM. OR SOUTHWARKEN. In the year 693, a contract of sale

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and purchase can be entered into as soon as the parties agree on the price, even if the price has not yet been paid. However, the right concerning goods belonging to the monastery of the nuns of Greenwich does not extend to this case, because such goods, according to the will of the testators, are intended to be used for the instruction of young girls in the city of Duderstadt, and cannot be given to the nuns of Greenwich, lest the will of the testators be violated, which is not permissible in any way. Furthermore, the nuns who claim these goods cannot fulfill their respective duties and obligations; nor can the ancient convent of Duderstadt be represented by a new one established in Greenwich, because, with the exception of only two, the other nuns were not found in the former convent of Duderstadt during the time of its suppression, nor do they belong to the German nation, and only recently have they been received in Greenwich among the Ursuline nuns. Moreover, according to the confession of the Very Reverend Mother of the convent in Greenwich, it is clearly stated that these nuns have never had the intention of returning to Duderstadt, for she wrote to the Bishop of Wratislavia concerning this matter: "We cannot leave the convent of Greenwich; for we have here our own home, well equipped; we serve here in duties and offices, which, although within narrower limits, do not exceed our strength; our modern superior greatly desires that our institution should continue to exist; three young women have recently joined us from Hibernia, whom we are neither allowed to take to Duderstadt, nor to leave in England; and there are no nuns lacking who wish to be transferred elsewhere." From this, it can be inferred that the nuns of Greenwich are reluctant to obey the Bishop's instructions, not because they believe they have a valid right, but because they are enticed by the hope of a greater compensation from the Bishop for those goods.

[*Latin ed. p. 694*]

694 HILDESHEIMEN. OR SOUTHWARSEN. It was proposed that they might be able to achieve this. How extraordinary and excessive this is, no one can fail to see. Regarding this matter, the Bishop concluded that the prayers of the nuns of Greenwich should be presented to the Holy See, so that they might be urged from the threshold of judgment. These matters, brought forth from here and there, led to the following question being raised: What rights do the Ursuline nuns residing in Greenwich have concerning the Duderstadt monastery and its immovable and inalienable property, and concerning the subsidy granted by the Prussian government in this case? RESOLUTION. The Sacred Congregation, after mature examination of the matter, decided on March 7, 1890, to respond with a negative answer in all respects, and furthermore: Regarding the following points: I. A sale and purchase may be concluded as soon as the parties agree on the price, even if the price has not yet been paid. II. And, if ecclesiastical property is involved, the consent of the competent authority must be ob-

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tained. III. The wills of testators must be preserved and observed to the letter, and not destroyed or altered. FROM THE SACRED CONGREGATION FOR RITES: Decree concerning the beatification and canonization of the venerable Servant of God, Francis Mary Castelli, a professed cleric of the Congregation of Clerics Regular of Saint Barnabas. Whereas, by decree of the Sacred Congregation of Rites dated February 9, 1889, permission had already been granted to proceed with an inquiry into the fame of the sanctity of life, virtues, and miracles of the aforementioned Venerable Servant of God, without the intervention or vote of the Consultors, the Most Reverend and Eminent Cardinal...

[*Latin ed. p. 695*]

695 The Most Reverend Monsignor Maria Parocchi, Bishop of Albano Laziale, proponent of this cause, at the request of the Reverend Father Alphonse Marie Mattioli, General Postulator of the Congregation of Clerics Regular of St. Paul and St. Barnabas, for the causes of beatification and canonization of the Servants of God, proposed the following question for discussion at the Ordinary Sessions of the Sacred Rites, held in Vatican on the designated day: Whether it is established that the process conducted in Naples, based on the reputation of the sanctity of life, virtues, and miracles of the aforementioned Venerable Servant of God, is valid and relevant, and to the effect of what is being considered? Furthermore, after mature deliberation and having heard the opinion in writing of the Reverend Fathers entrusted with the safeguarding of the Sacred Rites, and the Reverend Father Augustine Caprara, Promoter of the Holy Faith, it was deemed appropriate to respond: Affirmative. On February 27, 1890. These matters, faithfully reported to the Most Holy Pope Leo XIII by the undersigned Secretary, were approved and confirmed by His Holiness. On March 14th of the same year. DECREE of Cardinal Aloisi-Masella, Prefect, and Monsignor Vincent Nussi, Secretary, of the Sacred Congregation: Concerning the beatification and canonization of the Venerable Servant of God, Andrew Hubert Fournet, priest, founder of the Congregation of the Daughters of the Cross, commonly known as the Sisters of St. Andrew. Whereas, on the eighth of July in the year 1886, the Most Holy Pope Leo XIII had already graciously permitted that an investigation into the reputation of the sanctity of life, virtues, and miracles of the aforementioned Venerable Servant of God, Andrew Hubert Fournet, could be conducted in the Congregation of Sacred Rites, without the intervention and vote of the Consultors; and whereas, at the request of the Most Reverend Monsignor Raphael Virili, the Antistite of Urban, Postulator of this cause, the Most Reverend Cardinal Raphael Monaco, Bishop of Ostia and Velletri, proponent of this cause, proposed the following question for discussion at the Ordinary Sessions of the Sacred Rites, held in Vatican on the designated day: Whether it is established that

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the process, conducted with Apostolic authority, is valid and relevant.

[*Latin ed. p. 696*]

DECREE 696, concerning a building constructed in the city of [Rome] upon the foundation of a life of sanctity. Regarding the virtues and miracles, in general, pertaining to the aforementioned Venerable Servant of God, and concerning the effect of which it is spoken? The Eminent and Reverend Fathers entrusted with safeguarding the sacred rites, having carefully considered all matters, and having heard the voice and the written testimony of the Reverend Father Augustine Caprara, Promoter of the Holy Faith, judged it fitting to respond: Affirmative. On February 26, 1890. These matters, faithfully reported to His Most Holy Lord Pope Leo XIII through the undersigned Secretary, were ratified and confirmed by His Holiness on March 14 of the same year. Cardinal Aloisi-Masella, S.R.C., Prefect. Vincent Nussi, S.R.C., Secretary. DECREE concerning the beatification and canonization of the Venerable Servant of God, Mary Margaret Dufrost de Lajammera, a widow of Yopville, foundress and first superior of the Sisters of Charity of Marianople. CONCERNING THE DOUBT: Whether a Commission for the Introduction of the Cause should be appointed in this case, and concerning the effect of which it is spoken. The handmaid of God, Mary Margaret Dufrost de Lajammera, a widow of Youville, was indeed a strong woman, burning with zeal for charity, especially for the poor. She was born in the year 1701 in the place called Varennes, in the region of Lower Canada. Through the various states of life which she passed through, as ordained by God, she gave a conspicuous example of all virtues. She founded a religious institute, which has as its purpose the constant offering of aid and the bestowing of benefits of mercy upon the poor and the abandoned; and this institute, with God's help, has continued to produce abundant fruits until now. Also adorned with heavenly gifts, she reached the end of her days on December 23, 1771, leaving behind a most excellent reputation for sanctity. Furthermore, this reputation for sanctity was supported by miracles, which were subsequently attributed by divine grace to the intercession of this Servant of God, after the complete passing of a full century, and even beyond.

[*Latin ed. p. 697*]

Decree 697 was superseded, but it gained more and more force with each passing day. Consequently, it happened that the Most Reverend Archbishop of Marianopolitanus finally undertook a regular investigation regarding the same reputation of sanctity, as well as the virtues and miracles, of the aforementioned Servant of God. After this was duly completed, and presented to the Sacred Congregation of Rites, the Most Holy Pope Leo XIII graciously permitted that the question regarding the signing of the Introduction of the aforementioned Cause of the Servant of God be consid-

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ered in the Ordinary meeting of the aforementioned Sacred Congregation, without the intervention or vote of the Consultors, and this even though less than a decade had elapsed since the presentation of the Informative Process in the records of the same Sacred Congregation. Therefore, the undersigned Cardinal, Prefect of the aforementioned Sacred Congregation of Rites, at the urging of the Reverend Father Arthur Julius Capet, General Procurator of the Seminary of Saint Sulpice, Postulator of the aforementioned Cause, and after considering the diligent letters of several Most Reverend prelates and other men of both ecclesiastical and civil distinction, convened a meeting of the Ordinary sessions of the Sacred Congregation of Rites at Vaticanum on the following date, to discuss the following question: "Whether a Commission for the Introduction of the Cause should be signed in this case, and for this purpose." And the Sacred Congregation itself, after carefully examining all matters, and after hearing the voice and written opinion of the Reverend Father Dominic Augustine Caprara, Promoter of the Holy Faith, decided to respond: "Affirmatively, or that the Commission should be signed, if it pleases the Most Holy [Pope]." On March 27, 1890. Subsequently, a faithful report on the foregoing was made to the Most Holy Pope Leo XIII by the undersigned Secretary. His Holiness approved and confirmed the judgment of the Sacred Congregation; and with his own hand, signed the Commission for the Introduction of the Cause of the Venerable Servant of God, Mary Margaret Dufrost de Lajammerais, widow of d'Youville, on the aforementioned date of April 28 of the same year.

C. Card. Aloisi-Masella, Prefect of the Sacred Roman Congregation.

L. & S. Vincentius Nussi, Secretary of the Sacred Roman Congregation.

[*Latin ed. p. 698*]

698 APPENDIX IX. Herein are recounted several Decrees of the Congregation of Sacred Rites. MARSORUM. The Most Reverend Henry De Dominicis, the present Bishop of Marsorum, humbly submitted the following question for appropriate resolution to the Sacred Congregation: Whether it can be permitted, or at least tolerated, that custom, which has existed in the aforementioned Diocese from ancient times, whereby, during the funeral procession of the faithful, the coffin is placed once or multiple times in the street or square, and after the singing of the Antiphon "Libera me, Domine," it is sprinkled with lustral water, accompanied by the prayers of numerous clergy? And the Sacred Congregation, after careful consideration of the report of the undersigned Secretary, and the earnest opinion of another from the Masters of the Sacred Ceremonies, deemed it fitting to respond to the aforementioned question as follows: The aforementioned custom, provided that it is not done for the sake of sordid gain, which would cause scandal or admiration, can be tolerated in this case. And thus it responded. On the 20th of November, 1885. ISCLANA. The present Parish Priest of the Church under the title of the Most Sacred Heart of Jesus and of

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Saint Mary Magdalene the Penitent, located in the place commonly called Casamicciola, within the Diocese of Isclana, humbly proposed the following questions to the Congregation of Sacred Rites, with the consent of his Most Reverend Ordinary, for appropriate resolution, namely: Question I. Whether, after the recent and legitimate dedication of the Parish Church, also to the Most Sacred Heart of Jesus, while retaining Saint Mary Magdalene as the titular saint, the Parish Priest is obligated to offer the Mass for the people on both feasts, or only, as has been done up to now, on the feast of Saint Mary Magdalene the Penitent? Question II. Since, due to the extension of the Parish, the Parish Priest cannot, on Holy Saturday, visit all the homes of the faithful to sprinkle them with water from the font, can this necessary visitation be anticipated, beginning from the fourth Sunday of Lent, with water blessed in the usual manner? Question III. In this case, are the Antiphon and Prayer prescribed in the Ritual for reciting on Holy Saturday, namely "Alleluia," to be recited, or should another Antiphon and Prayer, which immediately follows in the same Ritual, be used?

[*Latin ed. p. 699*]

IV. The custom that has prevailed in this parish, concerning the funerals of the Brothers of Charity of Saint Mary of Pity, namely that, after the funeral procession has reached the entrance to the Brothers' oratory, the parish priest or his vicar, before the clergy and the people, removes his funeral stole, and the chaplain puts on his stole, sprinkles the body with holy water at the threshold of the oratory, and thus continues the funeral with his own ministrations, without any regard for parochial rights, is this to be tolerated? And the Sacred Congregation, in response to the aforementioned report of the secretary, and with the fervent desire of another of the Masters of the Apostolic Ceremonies, after mature deliberation, considered it fitting to respond to the questions posed in the following manner:

I. If the feast of the Most Sacred Heart of Jesus is not of precept, is the parish priest obliged to offer a Mass for the people?

II. Concerning the blessing of houses: in what case can it not be done before the Holy Sabbath, and in what case can it be done during the week of the Octave of Easter?

III. Regarding the provision in the preceding question.

IV. No, and let the decree of December 10, 1703, be given. And thus it responded and declared.

November 20, 1885.

The Most Reverend Lord Augustine Riboldi, the present Bishop of Papia, explained in the chapter of his cathedral church that there is no distinction in the provision of vestments, nor in the sacred vestments themselves, but that in pontifical functions, all canons customarily wear the cope indistinctly; and humbly requested a solution to the following questions:

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I. Since in the decree of the Congregation of Sacred Rites, dated March 13, 1608, it is said, "if the provisions are not distinct, let a distinction be made through vestments," should a distinction be introduced in newly made sacred vestments, or can the custom, which has been observed for three centuries, be maintained?

II. In these vestments, can gold fabrics be admitted for both white and red colors, or must a distinct color be used for each distinct solemnity?

III. To the extent that it is negative regarding the first part, and affirmative regarding the second part, can silver fabrics be permitted for vestments of white color?

And the Sacred Congregation, in response to the aforementioned report of the secretary, and with the fervent desire of another of the Masters of the Apostolic Ceremonies, after mature deliberation, considered it fitting to respond to the questions posed in the following manner:

I. The custom should be maintained.

II. Gold fabrics can be tolerated for both white and red colors, only for reasons of preciousness.

III. Affirmative. And thus it responded.

November 20, 1885.

[*Latin ed. p. 700*]

APPENDIX 700, ASCOLANA. The Most Reverend Ordinary of the Diocese of Ascoli has humbly presented the following to the Sacred Congregation: The Canons of the Cathedral Basilica, in private Masses, perform services; namely, that the server at Mass frequently, at the beginning of the Mass, opens the Missal and, at the end, closes it, and removes the leaves thereof, and also indicates the Introit, the prayers, and other parts; likewise, before the Offertory, he removes the paten from the middle of the altar, stands at the Epistle side, and uncovers the chalice, removes the pall from the Host: after Communion, the chalice, having been emptied by the celebrant, and perhaps covered with the purificator and paten, he places the pall upon it, folds the corporal and places it in the bourse, and finally, places the chalice, covered with the veil and bourse, in the middle of the altar. Lest this practice of serving, which has begun especially in the Cathedral Basilica and is also performed by other priests, should increase further, and spread to other diocesan churches; the same Most Reverend Ordinary has humbly submitted the following questions to the same Sacred Congregation for appropriate resolution:

Question I. Is there anything in the aforementioned practice that allows the Canons of the Cathedral of Ascoli to do, by virtue of custom, which was nevertheless disapproved by a resolution of the same Sacred Congregation on May 27, 1788?

Question II. And, negatively, must this be observed regarding any

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Canons whatsoever, to whom no prohibition has been made?

Question III. Are the Canons of any church, supported by no written privilege, but by any custom, bound, each and every one, to conform entirely to all the rubrics of the Mass in private celebrations, as are other priests?

Question IV. Of the aforementioned matters, is anything permitted to the Canons of Ascoli by virtue of an Apostolic privilege, regarding the use of the Canon and the Palmatoria in private Masses?

Question V. Can a General Vicar of the Diocese of Ascoli, who is not a Canon there, enjoy such a privilege of the Canon and the Palmatoria?

Question VI. Can the privilege of the Canon and Palmatoria, and if anything else is permitted, be valid when a completely lay person, sometimes barely an adult, devoted to the service of the Church, serves at a private Mass of the Canons, dressed in a clerical garment, either black or red in color, with or without a cassock?

Question VII. Can what is currently customary in private Masses of the Canons be done by custom in conventual Masses, which are chanted by the Mansionaries without a Deacon and Subdeacon; even if the Minister is a lay person, dressed in a clerical garment and cassock?

And the same Sacred Congregation, in response to the report of the undersigned Secretary.

[*Latin ed. p. 701*]

With a carefully considered request from another, one of the Masters of the Apostolic Ceremonies, after mature deliberation, decided to respond to the following questions: To I. Negatively. To II. and III. Affirmatively. To IV. The Apostolic privilege should be granted. To V. Negatively. To VI. It can be tolerated out of necessity, provided that the server is wearing a surplice and a cope. To VII. As to the previous. And thus he responded and declared. December 11, 1885. CAMERACEN. The Most Reverend Father Francis Edward Hasley, Archbishop of Cameracen, of the Holy Roman Church, humbly requested a resolution to the following questions: (namely: Question I. The nuns of St. Clara, or the Colettines, from the Kingdom of Belgium, in the Archdiocese of Cameracen, have adopted this practice: Within the enclosure, which is located between the choir of the Sisters and the sanctuary, a cell is prepared where the Most Holy Eucharist rests in a tabernacle. In the absence of a priest, the Sisters open the door of the cell, which they can see from their choir; however, the Most Holy Sacrament remains enclosed behind solid glass. Thus, the pious Sisters enjoy contemplation of the Holy Host at designated hours. The question is whether such a custom can be maintained? :x ix. 701′ Question II. The aforementioned Sisters, and certain others, supported by the authority of their Superiors, are denied daily Holy Communion, although, according

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to the rules and the decisions of many theologians, such a grace should be reserved for some only, and under certain circumstances. However, when the aforementioned Sisters are greatly saddened by the prospect of being deprived of such consolation, the question arises: what should be done in this case? And the same Sacred Congregation, after mature deliberation, having approved the response to the aforementioned questions, responded as follows: To I. The pious custom can be tolerated. To II. The custom is to be commended, and the frequent reception of the Most Holy Eucharist should be encouraged, according to the disposition of the Council of Trent (session XIII, chapter 8). And thus it responded. December 11, 1885. ILLERDEN. The Reverend Father Anthony Maurilio and Valverde, Canon of the Cathedral Church of Illerden, humbly proposed the following questions to the Sacred Congregation of Rites, with the consent of his Most Reverend Bishop, namely: By a diploma signed by the Catholic King, a chapel was established in honor of [someone]. However, this...

[*Latin ed. p. 702*]

702 APPENDIX: May He [God] grant him the faculty of using certain garments and adornments, conceded by the Holy See, namely, the violet cassock and cincture, the green biretta, commonly called a "solid," and a small cross suspended from the neck. The following questions are asked: I. Can he also use these garments in the choir? II. If the answer to the first question is negative, can he, at least in the choir, wear the violet cassock and cincture, since these garments seem to pertain to the exterior habit? And the Holy Congregation, in response to the report of the undersigned Secretary, considered it fitting to answer the proposed questions as follows: To I: No. To II: Yes. And thus it responded and declared. January 16, 1886. PALENCIA. The Ceremonial Master of the Diocese of Palencia, with the consent of the Most Reverend Ordinary, humbly proposed the following questions to the Sacred Congregation of Rites for a suitable solution: Question I. Since some, based on certain responses from the Sacred Roman Congregations, believe that the sacred pyx, with the tabernacle door open, can be exposed for the piety of the faithful, but not removed; while others believe that it can be removed, only so that it may be used to bless the people, as is customary on certain days in several churches of Regular canons; it is asked whether such a custom can be permitted? Question II. And if it is not permitted, can it be allowed by custom to those Congregations or religious families who have also been accustomed to do so elsewhere? Question III. Can it be granted, at the prudent discretion of the Ordinary, even to other Congregations requesting it? Question IV. In order to fulfill the mandate of His Holiness, our Lord Pope Leo XIII, according to the Decree of the City and the World, concerning the recitation of the Rosary on each day of October, along with the Litany, in all parish churches, and the exposition of the Most Holy Sacrament, so that the faithful may adore it, is a private exposition,

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namely, by opening the tabernacle door, sufficient? And secondly, can the pyx be removed in this case, so that the people may be blessed with it? Question V. In the same Decree, it is prescribed that if the Rosary with the Litany is recited in the morning, the Sacrament should be carried through the church during the prayers; it is asked whether these words should be understood to mean that the Rosary should be said at the same time as the Mass, or rather, that the Mass should be celebrated beforehand, and then the Rosary with the Litany should be recited, as is customary in the Diocese of Palencia? And the Holy Congregation, in response to the report of the undersigned Secretary, and with a heartfelt desire expressed in writing,

[*Latin ed. p. 703*]

Another, from among the Masters of the Ceremonies of the Apostolate, considered it advisable to respond in writing to the doubtful matters, namely: To I. Affirmative. To H. To be considered in the first instance. To III. Affirmative. To IV. To be consulted with the Most Holy [Father]. To V. Affirmative regarding the first part, Negative regarding the second. And thus he responded and declared. On January 18, 1886. Furthermore, the Secretary of the Congregation of Sacred Rites, having made a report to His Holiness, Pope Leo XIII, regarding the contents of the fourth doubtful matter, His Holiness deigned to grant the following: Considering the special circumstances of poor churches, in which the prescribed exposition of the Most Holy Sacrament cannot be performed solemnly or through a monstrance without causing inconvenience, it can be performed, with prudent judgment of the Ordinary, using a sacred pyx, namely, by opening the ciborium from the beginning, and blessing the people at the end. On February 4, of the same year. ROME, OR THE SPANISH COLLEGE. The Superior of the Missionaries of the Immaculate Heart of the Blessed Virgin Mary, and the Rector of the Spanish College existing in Rome, explaining its institution, being recently founded, did not have a prior order for performing the Divine Office and celebrating the Sacred Liturgy, and humbly requested it from this Sacred Congregation of Rites: I. Whether the Orator and his students residing in Rome are obliged, or can use the Calendar and Proper of the Roman Clergy? II. Or rather, are they obliged and can they use the Calendar and Proper of the Church of the Blessed Virgin of Monte Serrato in the City? III. If not, are they obliged and can they use the Calendar of the universal Church? And the aforementioned Sacred Congregation, considering the doubtful matters proposed in the report of the undersigned Secretary, considered it advisable to respond as follows, namely: To I. Affirmative. To II. and III. To be considered in the first instance. And thus it responded and ordered it to be observed. On January 16, 1886. BARCELONA. The Parish Church under the title of Saint Mary, located in the place called Matarone, within the boundaries of the Diocese of Barcelona, is considered consecrated because: from ancient

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times, the anniversary of the Dedication has always been celebrated on the last Sunday of October; because, during the demolition of the original altar, a document, very old, was found under the altar, asserting the completion of the consecration, along with five grains of incense and sacred relics; and because...

[*Latin ed. p. 704*]

704. Upon the walls, crosses were depicted, as testified by older witnesses of the preceding century, pertaining to the very Church itself. When, however, the population grew and the temple was enlarged, while the side walls remained intact, and a larger altar was constructed; gradually, the crosses disappeared. And in the year 1854, the interior surface of the walls was polished and covered with stucco, as it is called. However, the larger altar is neither fixed nor made of stone at the present time. But when some doubt arose concerning the consecration itself, the current Rector, an Archpriest, and the clergy of the same Church, with the consent of the Most Reverend Bishop of Barcelona, humbly submitted the following questions to the Congregation of Sacred Rites for a suitable solution:

Question I. Whether the aforementioned temple, due to the enlargement made, requires a new consecration?

Question II. And if the answer to the first question is negative, whether the consecration must be performed because of the addition of stucco?

Question III. And if the answer to both the first and second questions is also negative, whether it is necessary to erect a new, fixed, and stone altar, which must be properly consecrated, so that the Office of Dedication can be celebrated annually?

And the aforementioned Sacred Congregation, after carefully considering the report of the undersigned Secretary and the written opinion of another of the Masters of the Ceremonies of the Apostolic See, decided that the questions should be answered as follows:

To Question I and II: Negatively, that is, it does not require [a new consecration]; and let the crosses be painted and affixed on the walls as a testimony of the consecration already performed.

To Question III: Affirmatively. And it ordered that this be written down and carried out.

January 16, 1886.

[*Latin ed. p. 705*]

705 LETTER of the Most Holy Father Leo XIII to the Bishop of Vigevano; in which he expresses his sorrow over the insult inflicted upon him; concerning the fact that he was summoned before a lay magistrate, for the sake of performing his sacred office. Venerable Brother, greetings and the Apostolic Blessing. We have received with great distress the news of the

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grave insult inflicted upon you, inasmuch as, for the sake of performing your sacred office before a lay magistrate, you were subjected to a matter which is usually associated with suspected crimes. The sorrow we felt on your behalf was all the more acute because the episcopal dignity was being attacked, and this is a sad indication of the fierce persecution in which the Church is embroiled in Italy. However, our grief is lessened by the thought of the effects that must necessarily arise from such vexations, contrary to the designs of those men who have brought them about. For, the more unjustly the civil power exerts its authority against the Church, seeking to expand its dominion and to deter those who dispense the mysteries of God from their office through fear of punishment, the more clearly it becomes apparent how impudent the lie is with which the enemies of religion claim to be defenders of just liberty, and how futile is their attempt to make those who have devoted themselves to the holy militia of Christ traitors to it. For these men, with God's help, will not yield to threats, nor will they abandon their office, but rather, they will gain new glory from this noble struggle, as did the Apostles, and they will be deemed worthy to suffer insults, because they have obeyed God. Therefore, be of good cheer, Venerable Brother, and we congratulate you for the priestly zeal and constancy with which you perform your pastoral ministry. Continue to pursue this path with eagerness, and do not be discouraged by the troubles that you may, perhaps, still be subjected to by the will and wickedness of men. Let the examples of the faithful of old encourage you, of whom it is said, "that in much experience of tribulation, they have had abundance of joy and their very deep poverty hath abounded unto the riches of their simplicity." Let the hope of the greatest rewards encourage those who "have sustained the struggle for the sake of Christ and have not wavered." And may the helping grace of God be with you, and We impart to you, to your clergy, and to the people of the diocese over which you preside, Our Apostolic Blessing, which We offer as a testament of Our affection. Given at Rome, at St. Peter's, on this thirteenth day of June, in the year one thousand eight hundred and ninety, in the thirteenth year of Our Pontificate. LEO XIII, POPE. Acts, Vol. XXII, page OOLXIV, 45.

[*Latin ed. p. 706*]

706 FROM THE HOLY CONGREGATION OF THE COUNCIL OF POSNA, xN I E N. THE LEGATES, on the 25th of January, in the year of Our Lord 1890. Through summary petitions from the Supreme Authority, concerning the wills presented under the date of April 27, 1811, Cordula of Tournon stipulated that, from a certain rural estate, 60 thalers, 180 marks, that is to say, 218 or 225 livres, should be paid annually to the parochial church of the place of Goniembice, with these words and this law: "Firstly, I bequeath forever to the (estate) of Wyciazkowo the sum of sixty thalers for lights and for the anniversary of myself and my relatives, as well as

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for the illumination of the Sepulchre of the Lord, and I obligate my son, Adanuim, who will be the future heir of the estate of Wyciazkowo, to allow this sum to be properly secured as a mortgage." The Archbishop, after the death of the testatrix, having been informed of this pious bequest, most certainly approved it, and subjected it to the sanction of the civil government, which was issued on March 29, 1819. Then, according to the prescription of that same civil law, the heir freed the estate of Wyciazkowo from the imposed burden, by providing the sum of 4500 marks, which is 5625 livres, which was placed in public securities yielding 4% interest. In the meantime, the executor of the pious woman's will, who was her kinsman and the parish priest at the time of the parish of Goniembice, received the assigned sum annually, and, as the Bishop says, "he allocated only six marks for the treasury of the Church, and appropriated the remaining 174 marks to himself. And this custom was observed without the order of the Archiepiscopal See for approximately 50 years." "Then," continues the Prelate, "in the year 1868, my predecessor in this See, during an act of pastoral visitation,..."

[*Latin ed. p. 707*]

POSNANIEN. In the year 707, he grew, although without ordination, so that, according to the diocesan law, in addition to those six marks which were already paid to the Church, one-tenth of what the curate was accustomed to receive, namely 17 marks and 40 groats, together with 2 marks and 30 groats, would be paid to the Church treasury, which has been observed until now. "In the past year, when the modern curate requested formal ordination, my General Consistory... for the first time, on May 14th of the past year, ordered: - 20 marks to the priest for the anniversary; the remainder to be paid to the Church treasury. - This order was changed on July 3rd of the same year, in favor of the petitioner, so that only 81 marks would be paid to the Church treasury, and the remaining 99 marks would be paid to the priest for the anniversary." The tenor of this second decree is as follows: "We, therefore, with due deliberation, etc., approve the foundation of which we are speaking, etc., ordering that the intention of the founders, which can be seen and read in the authentic document which We have received and which is preserved in Our archives, be fulfilled; and also, that from the census paid from the principal capital of 4500 Prussian marks annually, 1. thirty-six marks be paid for purchasing candles to be placed around the bier on the aforementioned anniversary; 2. forty-five marks be used to decorate the Holy Sepulcher; 3. five organ reeds; 4. one shoe for the sacristan; 5. two marks for the altar boys; 6. and the remainder shall be received by the priest who fulfills the obligation of this foundation." From this decree of the Consistory, the parish priest appealed to the Archbishop, but in vain; therefore, he appealed to the Most Holy [See], and, after having stated what has been said up to this point, according to the observance,

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which can be no other than that which subsequently followed, with the consent of the Most Reverend Archbishops of Posen, the priest received 157 German marks, approximately 189 liras, - and 23 marks, approximately 29 liras, were spent on lamps and illumination of the Sepulcher, "postu-..."

[*Latin ed. p. 708*]

708. The Bishop of Posnania requests that the Most Holy Father "deign to order the annulment of the aforementioned decree of February 3rd, and to instruct the Reverend and Venerable Ordinary of the place to issue another decree, in accordance with the spirit of our Church's observance." And this, because the recent episcopal ordination has been given: 1. to the great detriment of this poor benefice; 2. in violation of just custom; 3. with an illegitimate increase to the treasury of the Church; 4. to the indignation of the relatives and legitimate heirs of the testatrix; 5. to the injury of the testatrix and her relatives; and 6. to the scandal of my parishioners.

Explaining this scandal, the parish priest added, in addition to the other matters mentioned, "According to modern civil laws, the administration of Church property is in the hands of laymen. In times of conflict between the royal government and the Church, some Church officials, envious of the priests, have caused some of the revenues of the benefice, while the curate is absent, to be spent on uses not in accordance with Church law. What joy will this decree bring to the wicked in the parish! They will have material for scandal by calling against the priest, accusing him of being a defrauder of the Church's treasury, and they will incite the good against their parish priest, who for so many years has received 189 florins from this sum! It is easily understood that this decree will be a cause for diminishing the faith of the parishioners in their pastor, and will also affect, with shame, the deceased priests, my predecessors."

The Archbishop, when asked for his opinion and vote, while declaring that he had already submitted himself to the judgment of the Sacred Congregation, nevertheless observed the following: "From the wording of the will, it appears that the aforementioned legacies have no other purpose than to provide lamps for the church, to pay for the celebration of one anniversary each year... and to illuminate the Lord's tomb on Holy Friday and the Holy Sabbath. But not a single word is mentioned of a more extensive endowment of the benefice, which the modern curate intends to propose as the main purpose of the legacies."

With these considerations in mind, the parish priest responded to each of the points in his appeal as follows:

[*Latin ed. p. 709*]

"To the Bishop of Posnania. 709

1. "Regarding the detriment to the poor man's benefit. It is certain that my decree causes some detriment to the benefit, but only a detriment to

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an accessory income, the determination of which is left to the authority of the Diocese, while the substantial income of the benefit remains untouched. Furthermore, whether or not this is a benefit for the poor, the Holy Congregation itself deems it appropriate to judge, since this rural benefit has an income of 4200 marks. Moreover, it must be added that the modern curate, that is, the petitioner, is granted 1200 marks from the revenues of the vacant Vicariate, so that in total he enjoys an income of 5400 marks."

2. "Regarding the violation of a just custom. This is the only point that perhaps seems to present some semblance of a just reason, but it must be considered: that original custom, whether it was just or not, is highly doubtful, and it was not interrupted in favor of the curate by the decree in the pastoral visitation issued by my predecessor 20 years ago, and no one has confessed that an injustice has been done to the benefit; therefore, the right to invoke a just custom in favor of the petitioner may even be denied to him."

3. "Regarding the illegitimate auction of the endowment of the Church treasury. Why it does not seem legitimate, when it has been decreed by a legitimate authority, and it does not cause harm to anyone, is difficult to understand."

4. "Regarding the indignation of the heirs and relatives of the testatrix. It is true that the petitioner invited and requested all the heirs and relatives of the testatrix in writing to declare whether they desired that the custom which had prevailed up to now be maintained in the distribution of the revenues of the legacy, of which we are speaking, and that all responded to him in accordance with his request; but it is not surprising that they all agreed, since they live outside the parish and none of them are concerned whether the distribution of the revenues is done in this way or in another. Moreover, they have no right to dispose of things pertaining to that parish."

5. "Regarding the injury to the souls of the testatrix and her relatives. How so, that because sometimes a smaller sum is awarded..."

[*Latin ed. p. 710*]

710 POSNANIEN. To the curate, concerning the dispensation, it must be understood that the souls of the deceased may suffer injury from this. "Regarding 6. - The scandal of the parishioners - must be considered in its entirety. Certainly, some of them, especially those who are related to the family, will agree because they are informed by the parish priest himself about the matter; but it must be doubted whether the rest will be offended, considering that the treasury of the Church is better endowed, and that the divine service is celebrated with greater solemnity."

A concise discussion: WHAT IS BENEFICIAL TO THE CURATE. It has been observed that the curate's favor is of the greatest importance, which no one surely ignores. Indeed, it serves greatly to declare the testator's will,

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as in chapter *Cum olim De causa poss.*, *Cum dilectus De Consuet.*, L. 1, interpretation of the Laws, the *Rota* before Royas decided, 279, n. 12, and in *Recent, decis.*, 163, n. 2, p. 10. *S. C. C. in Forosempronien.*, April 20, 1771, § *Quum enim.* Therefore, according to the well-known saying, the foundation must be presumed to be as the observance. Pitonius, *De controv. patron.*, allegation 98, n. 14. Fagnan, *De iure patron.*, p. 2, canon 26, vase 2, n. 44, and canon 16, ease 2, n. £ *S. C. C. in s. Severini canonicatus*, August 2, 1856, § *Itaque.* Moreover, interpretative observance does not require continuation and uniformity of acts. *Rota Decis.*, 966, n. 20, before Molines, in *Faventinae Coadiutoriae*, January 22, 1763, § *Nec.* For it is through interpretative observance that what was intended or given is declared; and it is taught that even a single act is sufficient to establish it, as Barbosa states in *L. Post dotem*, ff. on the solution of the dowry, a. n. 47. Lotter, *De re benef.*, I. 2, q. 11, n. 125. De Luca, *De iure patron.*, discourse 2, n. 16, discourse 60, n. 27. In this matter, custom, which is not contrary to law, must be observed and cannot be harmed by a decree of the Bishop, as the interpreters state in chapter *Cum M.*, *Ferrariensis De constit.*, and pre-

[*Latin ed. p. 711*]

POSNANIEN. 711 series, title Felin. no. 113, and Dop. no. 187, and S. O. C. All of these hold much greater weight if the observance is closely connected to and contemporaneous with the foundation. Pitonius, *De controversiis patrum*, allegation 100, no. 614; *Disputationes ecclesiasticae*, 159, no. 44. Compare with S. C. C., *Maceratae*, February 3, 1787. Ceriniolen, *Interpretationes*, April 1, 1876, § Orta, and, more importantly, the resolution of the S. C. C. in Bononien. Legati, December 11, 1880. Indeed, we have here an observance that is almost a century old, not only closely connected to the foundation, but one that was instituted by the executor of the will himself; therefore, it claims greater authority. But even the greatest authority would be diminished if it were considered that the heir of the pious woman, who was no other than the Ordinary of Posen himself, had, from the very beginning, approved of a practice that is now being challenged. "In the year of Our Lord 1820," says the present parish priest, "the Archbishop of Posen, Timotheus de Gorzenski, was himself the heir to the goods in Wiciazkowo, as a relative of the testatrix, who was from the Gorzenski family: he paid for several years the sum established for the parish church in Ooniembice, he knew the intent of the will of Cordula, and he did not neglect the observance." Furthermore, according to the same parish priest, "the relatives of the testatrix, who, for many years after the testatrix's death, were the heirs of the goods in Wyciazkowo and Goniembice, were also the patrons of this church, and they approved of the annual accounts of the church, yet they offered no opposition, nor did they make any complaint to the Reverend Ordinary against the observance."

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Indeed, the present heirs are content with this unusual practice; as they have not, until now, objected to it during the sacred Visitations before the local Ordinary. It cannot be objected that the executor of the will, namely, the parish priest of Goniembice, was a judge in his own cause, when he attributed the revenues of the legacy to himself. For it can be answered, whatever may be the case with this matter, that this does not invalidate the executor's position. But furthermore, the argument could be twisted, saying that the testatrix intended, by this very act, to favor the executor of her own will and his successors.

[*Latin ed. p. 712*]

712. FROM POZNAN. The decree of the year 1868 does not harm the observance, but rather favors it; for it at least implicitly recognizes the right of the parish priest to the residual fruits, imposing only the burden, which, however, does not seem unusual, namely, to pay one-tenth of the fruits in favor of the church fabric and for expenses of worship.

WHAT APPEARS TO BE A CONTRADICTION. On the other hand, it must be observed, above all, that the legacy, about which the question arises, was bequeathed to the parish church, and not directly and personally to the parish priest. Indeed, in the episcopal decree, it is written: "Cordula of Tournon ordered that an annual census of 60 thalers be secured in perpetuity for the parish church of Goniembice, for this purpose, etc." And the aforementioned author, in his supplication, incidentally writes: "Cordula of Tournon bequeathed 60 thalers to this parish church in her will in the year 1811." Furthermore, since the legacy is said to be bequeathed to the church, and not to the parish priest, it follows that, after the burdens are fulfilled, what remains should accrue to the treasury of the church for expenses of worship, and not to the parish priest as an augmentation of his income. Moreover, if the words of the will are interpreted in the manner proposed by the Archbishop, the income from the legacy would scarcely suffice to satisfy the burdens. For the Primate seems to infer from the aforementioned passage that "the legacy has no other purpose than to provide lamps for the church, to pay for one anniversary each year... and to illuminate the tomb of the Lord on Holy Friday." According to this interpretation, a double, or rather, a triple burden would be attached to the legacy, namely, for lamps in general, for the anniversary of the founder, and for the special illumination of the Sepulcher on Holy Friday. To satisfy these burdens, and especially the first, the entire income from the legacy would undoubtedly be absorbed, and therefore, a fortiori, the parish priest would be excluded from any emolument derived from it. And although this interpretation is not admitted, either because it is new, or because it does not entirely adhere to a natural distinction and division of words,

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since the legacy is said to be...

[*Latin ed. p. 713*]

POSEN. In the year 713, for the sake of the lights and the anniversary concerning myself and my relatives, these two matters appear to be joined together, and are opposed by the following passage, in which it is written, "as also for the illumination of the Lord's tomb"; nevertheless, the first argument still remains, namely, that the bequest is said to have been made to the church, and not to the parish priest. Indeed, since the parish benefice is described as being abundant according to the testimony of the ordinary, and conversely, the parish church is said to be narrow and meager according to the assertion of the parish priest himself, it therefore seems more fitting to hold that the bequest was left with the intention of benefiting the church. Furthermore, it is added that the family of the testatrix was a patron of the church, and therefore it can rightly be presumed that they were more inclined to favor it. Finally, from the letters of the Archbishop, it is clear that this bequest was "approved by the civil government in Posen on March 29, 1819, and assigned to the parish church of Gonimbice." Moreover, it is quite likely that the civil authority approved the bequest immediately after the death of the testatrix, and that it was assigned to someone other than the testatrix herself. Therefore, although the deed of testament is lacking, from which it might be judged with certainty about the inscription of the bequest, nevertheless, from these arguments, it seems safe to conclude that it was left to no one other than the church itself. With this established, the theory presented in the theme appears to be applicable, as found in chapter 25 of *De testamento*, which was long ago confirmed by the Sacred Congregation in *Roma, Legati* on August 3, 1658, and in *Civitatis Castellanae, Eleem. missar.* on December 15, 1742, namely, that when a testator bequeaths to a poor church, and commands that the fruits be used for the celebration of a certain number of Masses, the customary alms should be given to the priest celebrating, and the remainder should benefit the church. See Amostazo, *De caus. piis*, L. 1, c. 4, n. 24; Pasqualigo, *De sacris, mis. I*, 2, q. 968; and the Sacred Congregation in *Fanen. Reduci. Mis.* on December 6, 1768. Therefore, since the parish church of Gonimbice was named as the heir of the bequest, it follows that the entire amount remaining from the income of the bequest should be assigned to it, after the customary contribution for the anniversary has been paid. Indeed, with respect to this matter, the recent ordinance of the Archbishop, which is considered to be rigid and harmful to the rights of the parish priest, is also noteworthy.

[*Latin ed. p. 714*]

714. POSNANIEN. Hoc ita videtur, sed potius nimis benignum et admodum favorablem parocho. Nec est necesse ad consuetudinem appellare;

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quia in his circumstantiis, consuetudo non potest admitti nisi interpretativa vel praescriptiva. Sed interpretativa, nempe quae de mente et voluntate testatricis testatur, invocari non potest; nam interpretatio locum habet in obscuris et dubiis; « quia alioquin in verbis claris interpretationem quaerere idem esset ac nodum in scirpo quaerere. » *Glossa in c. Cum Dilectus, 8 De consuetudine, v. Iure communi. Barbosa, Axiomatica, 222, n. 32.* In casu autem, manifestum est quod legatum ecclesiae relatum est, et ideo in beneficio ecclesiae, non vero in augmento pingui parochialis, cedere debet. Sed neque ad consuetudinem praescriptivam recurrere potest, ut melius sit; quia praescriptio contra voluntatem defuncti et in damnum ecclesiae non procedit, nisi saltem sit absoluta in omnibus, idest nisi probetur possessionem fuisse pacificam, manifestam, idest non clam retentam, bona fide et ex iusto titulo colorato, per tempus a lege praefinitum. *Cap. 5, 8, 10 De praescriptione. Reiffenstuel ad 4 tit. Heinecius ad tit. De usurpatione et usucapione, n. 215.* Atqui in casu, dubitari potest utrum proventuum a legato provenientium perceptio, idest possessio quam parochus sibi vindicat, Ordinario, consilio fabricae aliisque interesse habentibus fuerit manifesta, idest non clam retenta ipsis; dubitari insuper potest, utrum bona fide et ex iusto titulo colorato huiusmodi legati perceptio obtinuerit: quod adeo verum est, ut ipse parochus qui hodie coram S. C. C. dimicat, ab Ordinario flagitaverit aliquam provisionem quoad legatum Cordulae; quod quidem indicat ipsum tuta conscientia ac tranquillo animo hac in re non fuisse. Demum vero ipsa continuitas possessionis, quae in materia praescriptionum essentialis et omnino necessaria est, deficere videtur in casu, et eique vulnus aliquod infiixisse Episcopalis ordinatio anni 1868. His praenotatis, quaesitum est quomodo preces essent dimittendae.

[*Latin ed. p. 715*]

POSNANIEN. 715 The Sacred Congregation of Councils, having reviewed the matter on January 25th, decided to respond: "Adhere to the latest decree of the Archbishop."

RESOLUTION: NEAPOLITANA CONCURSUS, February 22, 1890. Session 24, Chapter 1, Concerning Reforms. Regarding the controversy raised by the priest Contarini, concerning the fact that he was not included among those approved for the position in the competition for the parish of St. Mary of Gracias, and after considering the following questions: 1. Whether the judgment of the archiepiscopal court should be confirmed or overturned in this case; and 2. Whether and how provision should be made in this case; the Sacred Congregation of Councils, on May 4, 1889, responded: "There is no basis for an appeal, and in accordance with the opinion that the examiners did not sufficiently observe the Benedictine constitution, concerning the candidate Contarini."

(1) Burdened by this resolution, the priest Contarini requested a new hearing and, through his advocate, argued that there was indeed grounds

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for an appeal.

COMPENDIUM OF THE CASE. A Synopsis of the Dispute. The advocate stated that there are two types of appeals: judicial and extrajudicial; the former is made against a sentence, the latter against a grievance caused by a lower court in elections, appointments, and similar acts. Indeed, an appeal can be made against a grievance "through the legitimate means of contradiction or accusation," as Engel states in book 2, title 28, section 3, number 16, and in such a case, "even after the deadline, there is grounds for objection." This is confirmed in chapter 8 of De appellationibus.

DEFENSE OF THE PRIEST CONTARINI. (1) Volume XII, page 131, this controversy was reported.

[*Latin ed. p. 716*]

716. In Naples, in Volume VI. Therefore, when the priest Contarini was provoked by the imposition of a penalty through the means of accusation, the appeal, which is presented in opposition, cannot truly harm him. Indeed, it cannot even be said that the appeal has rendered the imposition of the penalty void. For he himself, in his wretched little book, asserts that he had been subjected to various forms of penalty by the Ordinary, and that he had long refrained from pursuing the matter through an appeal, only doing so according to the custom of treating similar cases; which is testified to by the priest Basso, and others. However, for an appeal to be effective, it is not necessary to use a specific sacramental form; but, as Huet states in I, 2, tome 28, question 10, "one must declare, either verbally or in writing or by action, within ten days that one is appealing to a higher judge"; and, as Engel teaches, cited in L, "the appeal can be made immediately after the final judgment, verbally by the word 'appeal,' or by an equivalent expression." Therefore, it seems that, according to the proponent, the priest Contarini appealed to the higher court at a suitable time and sufficiently, for he immediately complained of the imposition of the penalty: and this alone is enough, namely, to petition the Apostles and to pursue the appeal before the higher court. However, the time for making a petition to the Apostles and for pursuing the appeal in the higher court is not predetermined by canon law. Indeed, the words of the law in chapter 5 of "De appellationibus" state: "If an appeal is made before the final judgment, a year is granted to the appellants, or, for a necessary and evident reason, two years; however, the judge to whom the appeal is made may, considering the distance of the places and the nature of the case and the persons involved, assign a shorter period." This is confirmed by Trid. session 24, chapter 20, on reform, as well as by Engel, cited in I, title 28, number 48, Pirhing, book 2, title 28, number 145, and others. Furthermore, in the matter at hand, the judge did not set a specific time, but rather provided an opportunity to postpone the prosecution of the appeal; and even though this period did not exceed two years, the delay does not seem to have caused any harm. But

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even if it were the case that the priest Contarini, by the strict letter of the law, had forfeited his right to appeal, nevertheless, the proponent maintains.

[*Latin ed. p. 717*]

NFAPOLITANA 717 He was restored to his former position through the benevolence of the Most Holy [Father], and therefore he possesses the full and legitimate right to appeal, and may, for this reason, enjoy the benefits of the present proceedings. In the letters of the petitioner, in which he requested that his case be heard before the Most Holy Office, the following is written: "From the audience of the Most Holy Father, on August 27, 1888. - "Let this be noted in the file, and let it be notified to the Most Reverend Archbishop." However, justice must not be denied to one who has been restored to his former position, even if a hundred years have passed, "for I have judged justice," as stated in chapter [reference]. Furthermore, as explicitly stated in the decrees *Be rest. in integ.* and *L. S.*, 19 ff., and in the decree *Be appell.*, the advocate continues, proceeding to expound another point of the argument, asserting that there can be no doubt about the unfavorable report of the examiners and their unreasonable judgment, and therefore, about the nullity of the proceedings. Indeed, the Council of Trent, in session 24, chapter 18, concerning reform, commands that a cumulative judgment regarding the knowledge and qualifications of all candidates be provided by the examiners. It states: "After the examination, let those who have been judged suitable in age, morals, doctrine, prudence, and other things suitable for governing the vacant church be announced." This was further clarified by Benedict XIV in the decree *Cum illud*: - ibid - "Furthermore, the examiners, in order to obtain a certain and undeniable judgment of knowledge, after having examined the expertise of each individual in explaining a particular chapter of ecclesiastical doctrine, either from the Most Holy Fathers, or from the Holy Council of Trent, or from the Roman Catechism, and with equal diligence having weighed the answers given to the questions proposed from any written source, and after having finally discovered in what each person excels in the gravity of their judgments, and in the elegance of their speech, equally expressed in writing and adapted to the evangelical text or another given theme: let them apply equal, or perhaps greater, diligence in examining other qualities conducive to the care of souls; let them inquire into the honesty of their morals, their gravity, their prudence, the services they have rendered to the Church thus far, the praise they have acquired in other duties, and other admirable virtues, to be associated with a firm bond of doctrine."

[*Latin ed. p. 718*]

718 In Naples, and in all such cases considered together, those deemed unfit are rejected through their own votes, and those deemed suitable are presented to the Bishop. > Indeed, as the same Pontiff states in *Syn. dioec.*,

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book 4, chapter 8, number 3: "On August 2, 1607, the Sacred Council decreed that if the examiners do not report anyone suitable in all respects, as the Council requires, there is no agreement." Reclusius, in *De concur.*, page 1, volume 5, number 16, and others, concur widely. Furthermore, in the disputed case concerning Contarini, the examiners themselves admit that the form of the agreement was rejected, stating that it was "approved only on the basis of merit." It cannot be argued, to lessen the blame of the examiners, that a judgment regarding knowledge was omitted, since the priest, when presented with moral questions, answered them either not at all or poorly. On the contrary, the advocate observes that the priest Contarini answered well and sufficiently in all things, and in many things excellently, certainly better than the priest from the Orient, who was approved and received a parish. Therefore, the reason for which the omission of the judgment might be excused is not apparent; since a judgment cannot be omitted regarding the unfit and unworthy; and therefore, all the more so regarding those who are found worthy in morals and knowledge. For he who presents himself to the examiners has, as it were, a contractual right to obtain a judgment regarding his knowledge. Indeed, he may appeal to the appellate court. For, in the first place, the appellate court does not seem absolutely and substantially necessary for the purpose of the examination, and for the judgment of whether someone is suitable for a parish, as is clearly demonstrated in the opinion of the Consultor for the Congregation of May 4, 1889. But even this is not enough. For the person presenting himself, Contarini, did not omit the appellate court, but deviated somewhat from the intended topic, although not entirely, nor absolutely, as the same advocate observes from an analytical examination of the proceedings. Furthermore, since the appellate court is primarily required to determine the ability to preach, which, even if the person presenting himself deviated somewhat from the intended purpose, can nevertheless be sufficiently ascertained; it seems grave, solely on the basis of this deviation, to reject the person presenting himself, even in the face of contrary votes.

[*Latin ed. p. 719*]

NEAPOLITANA 719 was accepted, but furthermore, other instances of scientific misconduct attributed to the same individual were disregarded, and he was likewise removed from the list of candidates. Indeed, the esteemed advocate states, in our specific case, that it is well known to the Neapolitan Curia that the examination process has frequently been manipulated. Therefore, he adds, from all of this, a strong suspicion arises that the examiners, to whom the vacant parish of Contarinium was assigned, were not acting impartially, and that they nevertheless knew that the aforementioned Reverend Archbishop was strongly inclined to favor him, and that he had diligently striven to ensure that he would not be included among the approved candidates and presented for election. However, even if the

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examiners committed this error due to some oversight, since a grave injustice and violation of the proper procedure in the competition appear to have been committed against one of the candidates, the advocate concludes that such a competition cannot be considered legitimate. Nevertheless, he continues in the third section of his defense, arguing that since the parish of Saint Mary of Graces is currently provided with a pastor, and that he cannot be removed from it without difficulty and scandal, in order to preserve justice, a special provision must be made in favor of his client. Indeed, as all laws of justice require that damages unjustly inflicted be repaired. Just as a canon, unjustly prohibited from the choir, recovers his lost privileges, either through an unjust interdict or through an unwarranted deprivation, or through the loss of distributions, if he is acquitted by the judgment of a superior judge, as stated in Antonelli De iur. der. c. ult. n. 127, and Garcia De Benef. p. 3 c. 2 n. 363, along with others, so too, a similar provision seems appropriate in this case; for the aforementioned Contarini was also unjustly and without cause prevented by the examiners from assuming the position and being elected. This is even more important, since it is known that the Archbishop considered the aforementioned Contarini worthy to govern the parish of Saint Mary of Graces; indeed, he entrusted him with the office of administrator during the vacancy, as the priest Bassi, Father Bonaventura de Cicciano, and Mr. William Rannone attest, as if Contarini were an actor. Furthermore, there are promises, which, according to several witnesses, were made by the Ordinary to the priest Contarini, namely "di com-".

[*Latin ed. p. 720*]

720 NEAPOLITANA: "to think of it in any other way than as a received injury": and especially, the honesty of the life and the merits of that priest are concerned, which the examiners themselves could not deny, but which should have been assessed at 51 points, that is, the highest grade. Therefore, not only on account of the suffered injustice, but also on account of the promises made to that priest and his merits, there was reason for Providence, according to the prudent judgment of the Most Eminent and Reverend Fathers, to intervene, and the patron concludes. THOSE THINGS WHICH SEEM TO STAND AGAINST SACERDOTE CONTARINI. On the other hand, the Most Reverend Archbishop defends the cause of the examiners against Contarini, in a printed and published document; and, above all, he absolutely and firmly asserts that the homily and the solutions of moral cases, which Contarini had presented, had been carefully examined and diligently considered. And this is confirmed by the testimony of the examiners themselves. That the writings of Contarini were not assessed by the votes of the points, happened for this one reason, because the examiners considered it utterly useless to do so, since they were certain that he would be placed outside the competition. The examiners do not seem

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to have arrived at this judgment lightly: for the same Prelate reports that when the examiners had read the homily, they considered two things: first, that the priest Contarini had not satisfied the assigned topic; second, that the priest Contarini had committed the homily to memory before the competition; so that he would transcribe it during the competition, without any care whether it was adapted to the proposed text. The intellect of the priest Contarini was not such that he could compose such a homily in so short a time. In this matter, when ten others were present competing, who had satisfied the topic and the cases of moral theology, the examiners considered that the rights of a third party were being violated, to the extent that points were given to Contarini's homily, when there was a serious doubt whether it was written by him: and whether the homily was part of the competition. On these points of reason, the majority of the examiners, when giving their vote, stood for the exclusion of the priest Contarini, whose participation was not a renunciation.

[*Latin ed. p. 721*]

In this situation, and given that the evidence presented by Contarini did not demonstrate that his case was, in fact, free from serious flaws, there remained nothing else to do but what was done, namely, to abstain from rendering any judgment. This course of action, as it was just and necessary, seemed, on the one hand, to be beneficial to the honor of Contarini himself; for it is better to be denied a favorable vote than to be condemned by adverse votes. Therefore, the Most Reverend Primate considered the exclusion of the priest Contarini by the examiners to be entirely legitimate in itself. However, it should also be considered in light of certain external factors. For those who perform the duties of examiner in the Neapolitan Curia are men of the greatest learning, thoroughly tested in science, age, and virtue; whereas the one who acted as examiner was no other than Canon Peluso, a man indeed eighty years of age, but still vigorous in mind and body, who for a long time served as secretary to the Most Reverend Cardinal Riario, and who, if he has now relinquished his duties, it did not happen as a punishment, as some might suggest, but rather due to a just consideration of his age, and with the consent of the Most Reverend Primate, who greatly valued the distinguished merits of the aforementioned Canon. To this must be added the omission of an appeal within the prescribed time, which itself provides a strong presumption, and a most valid one, of the justice of the judgment and the decision. For it is well known that, if an appeal is not made within the prescribed time, the matter becomes *res judicata*. And *res judicata* is accepted as true, as stated in the *regulae*, 207 and following. Furthermore, it has in its favor the presumption of law that the judgment is just, and that the party condemned has consented to it, according to the decrees cited by Reiffenstuel in *lib. 2, tit. 27, § 4, n. 109*, and in *cap. Quod ad consult. 5* of the *De Sententiis et Re Iudicanda*.

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Indeed, it may be said that the priest Contarini, at the very least, implicitly appealed. For the objections that are always raised by the most virtuous individuals, if they should be rejected or condemned in a judgment, cannot be taken as a formula of appeal, as stated in the *Acta, Tom. XXII, fase. CCLXIV, 46*.

[*Latin ed. p. 722*]

722 In Naples, a written document or a verbal appeal are equivalent. Otherwise, the case of an omitted appeal would never arise. However, the argument presented against the speaker regarding a challenge through accusation, even after ten days, may have some force in certain circumstances; but it is not applicable to the main issue, nor to the matter of the concurrence. For the law expressly states that "an appeal shall not be admitted... unless it is interposed within ten days from the day of the collation." This rule, having been established by Clement XI and confirmed by Benedict XIV to eliminate abuses and to prevent elected candidates from being perpetually harassed, and to ensure that the status of parishes remains certain for a long time, thereby excludes any broader contrary exception. Furthermore, "clear words, as in the main issue, do not admit of interpretation, nor of conjecture of the will," as Barbosa states in axiom 222, number 32. It is not true that the Archbishop of Contarinium detained Emus, preventing him from appealing within a reasonable time. Indeed, the Archbishop writes as follows: "As a legitimate consequence, the Ordinary owes nothing to the priest Contarini regarding the matter of the concurrence, since there was security that the action had been taken with a clear conscience." If the Archbishop spoke kindly to Contarini, it was only to comfort him, using general words that contained no promise. And the very brother Maiella, to whose authority Contarini appealed to demonstrate promises made to him, confesses in particular letters that he never discussed these matters with the priest Contarini. Therefore, from where does the Archbishop argue that the priest Contarini owes nothing, and that nothing can be legally demanded from him? Not because of his expulsion from the list of candidates, since, according to the statements, this seems just; not because of promises made after the concurrence, which do not exist; but neither because of promises made before the concurrence: which is confirmed by the letters of the Vicar General. Nor can a deputy be appointed to administer a parish during a vacancy, in such a way as to imply a promise of a permanent appointment.

[*Latin ed. p. 723*]

NEAPLES 723. "Indeed," said he, "it was a prudent measure, as Emus stated, for Contarini to be appointed, for a time, to administer the parish, because he knew almost the entire population, and after the death of the pastor, he alone could attend to many matters of the greatest importance,

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which only he, through intimate familiarity with the deceased pastor, could know. However, he would eventually obtain the parish permanently after a successful examination; and the words that the Archbishop could utter in this matter were intended to encourage Contarini to undergo the examination, but they contained no promise whatsoever, lest the freedom of the examination be violated. Therefore, if the priest Contarini owes nothing legally, he cannot, in any way, demand the parish without an examination, which is entirely unusual in the Neapolitan Church; and even less can he acquire the canonry of the cathedral church, which is usually granted only to the most deserving and is considered a mark of distinction. Moreover, if, on this occasion, the priest Contarini has offended the diocesan authority, whether through calumnies, complaints, or disputes, he should, even if otherwise worthy, be considered ineligible for any reward in this matter, according to the Ordinances. Therefore, considering these and other matters, the following questions were proposed: I. Whether one should adhere to or depart from the decisions in this case. And, to the extent that the answer is negative regarding the first part, and affirmative regarding the second part; II. Whether the examination can be declared null and void, and if so, how should provision be made in this case?

RESOLUTION. The Sacred Congregation of the Council, after discussion on February 22, 1890, decided to respond: To I, in the decisions. To II, provision should be made in the first instance.

FROM WHICH WE GATHER: I. The appropriate time to appeal in matters of examinations is ten days from the date of the appointment, according to the decree of Clement XI, confirmed by Benedict XIV; so that the elected may not be perpetually troubled, and the status of the parishes may not remain uncertain for a long time.

[*Latin ed. p. 724*]

724. In Naples, it must be understood that an appeal is made either through a written document or through a verbal declaration within the proper ritual; and it cannot be said that simple inquiries, commonly made by those who have been dismissed, are equivalent to these two methods of making an appeal. III. Therefore, if ten days have passed without an appeal, the matter is considered to be judged, or there is a presumption of law that the judgment has been rendered and the justice has been carried out; and the condemned party is considered to have consented to it. IV. In the matter under consideration, it appeared that a formal appeal had not been made within the proper time; and therefore, for the first time, there was no basis for an appeal. However, the Sacred Congregation responded in its decisions: LIPAREN. OF ABSOLUTION, on February 22, 1890. Through summary petitions. The priest, Peter Barresi, was the holder of a certain chaplaincy, which, as he himself stated, he retained by the will of those who had the right, as a chaplain, to celebrate, while at

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the same time he lacked the legal right, which his parents had, to choose a successor to the chaplain. The income of the chaplaincy, based on four small rural properties, was calculated to be 229 livres; the expenses from the beginning were the same amount, consisting of masses offered at the rate of 0.68 livres each; but recently, the number of masses had been reduced due to an increase in alms to 0.85 livres. However, in the month of January of the previous year, it happened that this priest, whether through collusion with the patrons, or rather through abuse of power, it is not clear under which civil law, fell into such a deception of malice and injustice, that he, as he himself stated, sold the benefice to someone who was indebted to him, having agreed to a lifelong pension of two livres per day. Because of this crime, he was suspended by the Ordinary in order to return to sound judgment; and therefore, having repented of his actions, but...

COMPENDIUM OF THE CASE.

[*Latin ed. p. 725*]

A poor man, rendered destitute and unable to provide for himself, seeks some provision from the pious Mother Church. He wrote to the Ordinary: "For your consideration and decision, and so that those who may have an interest may be informed, I ask whether it might be possible to impose upon the orator the obligation of restoring the endowment of the chapel, or a portion thereof, through an annual payment of at least half of the agreed-upon pension, in lieu of the price of the funds sold."

The Prelate responded: "Having considered the matter with those who have an interest, I have found that it is difficult, and perhaps impossible, to impose upon the orator the obligation of restoring the endowment of the chapel, in any way, because the poor man, who is by nature ignorant of and incapable of thrift, and whose daily agreed-upon pension of two pounds is scarcely sufficient for his own sustenance, especially as the years pass."

A Synopsis of the Discussion: It was considered that the Bishop had not spoken clearly or fully enough in his response, nor had he stated who the buyer was, or whether there was any hope of obtaining a rescission of the contract from him. For, whatever the circumstances, a sale is null and void by law. Whether the chapel is an ecclesiastical benefice, or rather a simple bequest for masses, it is nonetheless a sacred thing which cannot be alienated without a just cause and the proper formalities, as stated in chapter 6 of the De rebus ecclesiasticis. Furthermore, a condemned sale implies a violation of pious intent, which, like all such transactions, can only be valid with a just title and the approval of the Apostolic See, according to Clementine De relig. dom. and session 22, chapter 6 of the Council of Trent. Moreover, it is to be noted that, if the sale concerns either beneficial goods

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or spiritual things, the contract is likely tainted with the sin of simony, and both the seller and the buyer are subject to the penalties of the simoniacs. Finally, if the matter concerns a true patronage in a benefice, and if there is an agreement or convention between the patrons involving a criminal alienation...

[*Latin ed. p. 726*]

726. It has happened that, following the loss, a new penalty is imposed, namely, the loss of the patronage, as expressly stated in the Council of Trent, Session 22, chapter 11, concerning reform. However, these matters cannot be properly determined without due investigation. Nevertheless, from the Bishop's letter and the petition of the petitioner, it is sufficiently clear that the unfortunate priest finds it difficult to completely undo and correct the evil he has committed, and yet he sincerely repents. Therefore, setting aside other considerations, it seems that the only thing to be considered is whether the petitioner is worthy of absolution, and under what conditions. For no one can be compelled to do what is impossible; and the grace of repentance and the request for forgiveness should not be denied to anyone. However, since the petitioner has claimed a greater profit from the illicit sale than he previously obtained from the legitimate possession of the chaplaincy; and since, on the other hand, the profit was acquired through injustice, the benefit derived from a crime, and recognized by a judge, it is entirely appropriate that the Most Reverend Fathers should decide what is to be done in this matter.

With these premises, the question was raised as to how the prayers should be granted.

RESOLUTION. The Holy Office of the Council, having knowledge of the matter, responded on February 22, 1890: "Regarding the authority of the Ordinary to absolve the petitioner from censures and irregularities, whatever the circumstances, a suitable salutary penance is imposed, and the obligation is placed upon him to deposit two hundred livres annually in the hands of the Ordinary for the restoration of the chaplaincy's endowment, while the obligation of celebrating the masses belonging to the chaplaincy remains in force; however, this indulgence does not extend to the purchasers, as has been declared by the Most Holy Fathers."

[*Latin ed. p. 727*]

727. CONCERNING A CHANGE OF INTENTION. February 22, 1890. Through a petition, Vincentia Camilleri, a pious woman who had been a widow and was poor for many years, entrusted her only son, named Salvatore, to the diocesan seminary of Melevita. Subsequently, following his latest desire, and seeking a means to support him in serving the Lord within the Society of Jesus, and to cover the expenses of his novitiate, she sought assistance and contracted a loan. She had previously requested,

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since the year 1886, three dowry subsidies for this very purpose. The Ordinary, when consulted according to custom, reported that the administrators of the endowments were opposed, and added: that the considerations presented by the administrators should nevertheless be taken into account. It was sufficiently established that the young man was related by blood to the founders of the endowments; and therefore, an injustice would be done to the founders of the endowments, as if they were opposing the pious intention of one of their descendants, who desired to embrace a more perfect state of life through marriage. Furthermore, in this case, it should not be overlooked that the pious mother spared nothing to fulfill the desires of her son, burdening herself with debt and bidding farewell to her only son, from whom she alone could expect assistance in her old age. After these considerations, a response was received from the Sacred Congregation: "Let the Procurator General of the Society of Jesus be heard." He responded as follows: "I have asked the Prefect of the Sicilian Province what his opinion is on this matter; who wrote to me that what is stated in the supplication letters from Vincentia Zarb, the mother of the aforementioned Salvatore, to the Holy See, is true; and since the son has been living in the Society for almost three years, she has thus far been unable to pay the expenses incurred, despite the debt contracted for this purpose; therefore, nothing prevents the grant of this favor." SUMMARY OF THE MATTER.

[*Latin ed. p. 728*]

728 MELEVITANA Since it is known that it is not the custom in the Society of Jesus for the expenses of novices' food, clothing, and other necessities pertaining to their support to be paid by their parents or others, letters were sent to the General Congregation, so that it might be determined what should be done regarding the aforementioned matter. The General Congregation declared that it is not the custom of the Society to demand any sort of gratuity or pension from novices; however, the Province of Sicily, having been so deprived of its goods and money that it has no means of properly supporting its members, and being truly in great need, has been granted the faculty of making and enforcing special regulations in this regard; and therefore, it does not see any difficulty in complying with the request of the Widow Zarb, nor in complying with the response of the Provincial.

SYNOPTIC DISCUSSION.

PRESUMPTIONS TO BE CONSIDERED.

Having stated these things, there remains little or nothing to add. For it is well known that the Sacred Congregation does not hesitate, for a just and reasonable cause, to alter the wills of testators, so that some relative of the

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founders of pious causes, even if suffering only from relative poverty, may be assisted, as is evident from the Roman document *Subsidii* of March 30 and August 3, 1858, in question 4, from the Roman document *Alimentorum* of August 28, 1841, from the Roman or Auximana document *Subsidiorum dotalium* of March 15, 1794, and from many other documents. But in this case, we are dealing with a person who is in extreme poverty, and who, therefore, deserves to be received with even greater kindness and mercy, the more generous she has been to God, and the more pious and religious she is. For she freely gave and consecrated to the Lord her only son, who was the support and comfort of her life and old age, and she endured that he go to distant lands, for the good of religion and for the salvation of souls, among the infidels. Therefore, she seems to have a new title to grace. For it has been discovered that, in order to increase the worship of God, and to attain the salvation of souls, the Sacred Congregation has often, when other means were lacking, induced testators to...

[*Latin ed. p. 729*]

MELEVITANA 729 desires to be changed, but also a reduction in the number of Masses to be celebrated, as appears from V er oneri. Regarding the union and reduction of Masses, see Unionis et reductionis missarum 1846, cons. 54, n. 6 and 7. Furthermore, the derogation of the will is not perpetual, but only for this occasion, and therefore less objectionable. PRAYERS TO BE CONSIDERED. However, it must be considered that, in the matter of dowry subsidies, the alteration of the will inflicts a wound, not only on the wills of the deceased, but also harms the rights of third parties who have acquired them. Indeed, the girls who had hoped to receive these dowries, and who, in fact, had a right to them, would be completely deprived of them. How hateful and how much care should be taken to avoid this, it is unnecessary to say. But, if ever, this aversion seems to be confirmed in this case. For in the proposed case, the dowry subsidies would truly not benefit the most pious mother, who certainly deserves all compassion, and indeed not even her son; but rather the Society of Jesus, or its Sicilian province, as appears from the letter of the Procurator General. With these premises, the question arose as to how the prayers should be dismissed. RESOLUTION. The Holy Council, having knowledge of the matter, decided on February 22, 1890, to respond: "Considering the particular circumstances, and after consultation with the Most Reverend Archbishop of Avien, it is the opinion of the Council that..." MATRIMONY. February 22, 1890. Session 24, chapter i, On reforms. COMPENDIUM OF THE FACTS. On August 10-22, 1869, before the local pastor of Crestochowa, the girl Felicia Pokrzynicki married Feliks Stronczynski; but with a most unhappy outcome. For, gradually and without apparent reason, the spouses abandoned lares, because the husband, through harsh treatment, and through

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useless efforts to maintain the marriage.

[*Latin ed. p. 730*]

730. WŁADISLAWIEN. To jego żona, jak sama twierdziła, z dnia na dzień stawała się coraz bardziej odległa. Ponieważ w tych okolicznościach wspólne życie stało się niemożliwe, w końcu, dnia 23 sierpnia 1882 roku, opuścił on dom swojej narzeczonej, w którym mieszkała, i pożegnał się z żoną. Kobieta, choć zbolała, w październiku roku 1884 zwróciła się do sędziego, aby uwolnić się od tego nieszczęśliwego związku. Sędzia najpierw, zgodnie z tradycją, podjął próbę mediacji między małżonkami. Mąż był do tego gotów, ale żona wcale. Tak relacjonują fakty: "Po tym, gdy przewodniczący sądu zapytał oskarżonego, czy chciałby coś powiedzieć w odpowiedzi na żądanie żony, ten przemówił, a w swojej mowie, która została spisana i wygłoszona przed sądem, wcale nie zaprzeczył, że jego żona jest dziewicą, ale twierdził, że to się stało z powodu natarczywych próśb żony. Pod koniec tej mowy oskarżony prosił sąd konsystorski, aby swoim wpływem skłonił żonę do wycofania się z tego procesu, a nawet do wspólnego życia z nim, czego pragnie całym sercem, uważając związek małżeński za nierozerwalny." Jednakże, aktorka nie ustąpiła i nalegała na wszczęcie postępowania kanonicznego. W orzeczeniu sądu, które zostało wydane po zakończeniu postępowania i wraz z aktami zostało przesłane do Świętego Stolca, można przeczytać: "Po odczytaniu pozwu, przewodniczący zapytał oskarżonego, czy chciałby coś powiedzieć w odpowiedzi na żądanie żony, ten przemówił, a w tej swojej mowie, która została spisana i dołączona do akt sprawy, wcale nie zaprzeczył, że jego żona jest dziewicą; twierdził jednak, że to właśnie on chciał, aby jego żona pozostała dziewicą, czemu nie chciał się sprzeciwić, i mówił o swojej powściągliwości. Na zarzut, że jego żona pozostała w stanie dziewictwa, ponieważ jest niezdolny do dokonania aktu małżeńskiego, odpowiedział, że to nieprawda, i prosił sąd konsystorski, aby swoim wpływem skłonił żonę do wspólnego życia z nim, czego pragnie całym sercem, uważając związek małżeński za nierozerwalny. Jednakże, aktorka, nie..."

[*Latin ed. p. 731*]

"WLÁDISLAVIEN. Dum exhortatio perseveraret in defendenda sua causa in libello accusatorio exposita, iudicium Consistorii, considerata impossibilitate restituendae concordiae inter dictos coniuges, nullaque alia *media* hunc scopum adipiscenda decreto suo die 28 Novembris (10 Decembris) 1884 lato, processum in causa hac matrimoniali conficere iussit. At in processu vir contumax undequaque fuit: non comparuit, nec testes proposuit, nec corporis inspectionem pati voluit, sed, hanc illamve rationem allegando, se excusavit. Mulier e contra excussa est, totumque rei maritalis negotium candide enucleavit et inter alia haec enarravit: "Aliquot dies post nuptias vir mihi intimavit se velle carere prole: se nolle

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in eodem mecum cubiculo dormire, medicum enim sibi prohibuisse omne commercium carnale cum uxore." Attamen "primo mense post nuptias locum habuit tentamen perficiendae copulae maritalis... Huiusmodi tentamina consummandi matrimonium initio saepe repetebantur, quoties tamen nescio: subsequentibus annis rarius fiebant.... Non impedivi virum in conamine consummationis matrimonii, non me excusavi, libenter ei in hoc obedivi in situ ordinario." Et infra: "Certa sum numquam factam esse consummationem matrimonii meque virginem existere... Impotentiam viri ad actum coniugalem perficiendum morbis adscribo: a quo tempore tamen extitit haec impotentia nescio: constat mihi tantum ipsam a primo momento nostri matrimonii extitisse. Scio maritum meum consuluisse medicos et curationi subiectum fuisse: qualis morbus erat, quosque medicos consulebat, ignoro. Frustranea haec tentamina perficiendi copulam multoties causarunt mihi morbum gravem." Addidit, post triennium cohabitationis primam temporaneam separationem contigisse: post septennium iterum contubernium restitutum fuisse: at malis dissidiisque ingravescentibus tandem fuisse absolute dissolutum. Et conclusit his verbis: "A primis annis vitae coniugalis exponebam confessariis, quae esset nostra vita communis et quae relationes maritales. Omnes fere confessarii mihi consulebant."

[*Latin ed. p. 732*]

732. WLADISLAJIEN. Because of the reasons, as I believe, that I have presented, I endeavored to work towards dissolving this bond. "But from the beginning, the process was opposed by the husband, and finally, by the horror 'with which the very unpleasant course of the process struck me.' Afterwards, seven witnesses of the actress were examined, who, with one voice, confirmed her statements, and declared her worthy of faith and deserving. Then, a thorough examination of the actress's body was made, according to the law, and all, whether midwives or doctors, unanimously proclaimed her still to be a virgin, Felicia. Finally, the defender of the bond requested that seven other witnesses be called from the office, who would, as it were, take the place of the seventh witness. But all of these, with only one exception, the doctor Wygrzywalski, who, however, wished to abstain from taking an oath before confession, entirely supported the woman's intention: and declared that she was worthy of faith and pious, and that the man was impotent. Based on these acts, the judge delivered his judgment on March 15, 1886, in which he not only declared the actress 'to be a virgin,' but also expressed his moral conviction that the marriage [between Felicia Stronczynski and Felicia Pokrzynicki, with the impediment of the husband's relative impotence, and therefore invalid,] had been contracted. However, he considered it prudent to abstain from declaring the marriage null, because the examination of the man could not be completed. But he added, in the same judgment, that there were sufficient and grave reasons

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for granting a dispensation from the valid marriage by the Most Holy See. Afterwards, the Bishop, in the name of the actress, implored the Most Holy Father to deign to grant a dispensation from the valid marriage to her, and for this reason, the matter was referred to the Sacred Congregation for the vote. A Synopsis of the Discussion. DEFENSE OF THE WOMAN. The patron, whom the woman had chosen, in order to obtain the grace of a dispensation for his client, presented two...

[*Latin ed. p. 733*]

WLADISLAVIEN. He further endeavored to demonstrate, with facts and titles, the validity of the marriage and the absence of consummation. Regarding the former, he stated that it is clearly proven by the testimonies of both spouses, as related above. Indeed, as taught by C. Cosci, *De Separ.*, I, 3, c. 2, n. 134, the confession of the spouses in this matter must always be given the greatest weight, "especially if they are far from any fraud or collusion." However, collusion between the spouses is not even conceivable in this case; for the wife opposed the husband, and he, who sought to establish marital relations and to remove the stigma of shameful impotence from himself, was everywhere prevented from achieving consummation. Furthermore, all the witnesses present testify to the actress's utmost honesty and piety. Thus, the priest Barytkeiwicz stated: "Regarding the actress's religion and probity, I know her very well; and I can swear that Lady Stronczynska would never commit perjury or lie." And so testified the others. Thus, a new argument arises in favor of the actress's credibility. Moreover, almost all the witnesses testify that they heard, at a time when there was no suspicion, that this marriage was null, that the actress was a virgin, and that, according to their moral judgment, the cause of the lack of consummation should be attributed to the husband's impotence. Thus, the actress's reputation is again confirmed by evidence. But most importantly, the physical examination of the woman supports this. The midwife Pudtowska stated: "I found her to be a virgin, and indeed, because she has a hymen; her womb and breasts prove that she has never been pregnant, nor has she had children; these are absolutely certain signs. There are no means by which virginity can be feigned; and even if such means were employed, I would have detected them after the bath, in which artificial means are dissolved." Similarly, another midwife, Muszynska, testified: "I am certain that Lady Stronczynska is a virgin; I assert this for the reasons already explained." Also, a third, Buli-

[*Latin ed. p. 734*]

734. WLAOISL AVIEN. KOWSKA: "I am certain that Miss Stronczynski is a virgin, and I assert this based on the reasons presented by me." Furthermore, Doctor Bondy, in a written testimony, stated: "The coherence of the labia majora... and, above all, the presence of an intact hymen, in-

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dicate untarnished virginity, and therefore, the absence of consummation of marriage." Another doctor, Voiciekiewicz, after thoroughly describing the signs of virginity found in the actress, concludes: "Therefore, I declare Felicia Stronczynski to be a virgin, who has never consummated a marital union." Also, a third expert, Doctor Biesanski, stated: "Miss Stronczynski is a virgin; she has not consummated marriage, not due to any defect in her organism or in her genital organs." And these are the statements that the doctors presented in writing after careful obstetric examinations, and which they subsequently confirmed in court, as can be seen from the records, and as reported by the advocate. Finally, the advocate reiterates the principle that experts are "to be considered more for their judgment than for their testimony," according to the common teaching of Cardinal De Luca in *De iudiciis*, discourse 33, number 20, and others. Moreover, the expert conclusions regarding the actress's virginity cannot be dismissed, even considering that the experts, not only based on the existence of the hymen, but also on all other signs taken together, judged the woman's integrity. Furthermore, three other doctors, who are among the seven witnesses, and who examined Felicia for the purpose of treating illnesses after many years of marriage, also testified that they found her to be a virgin. Regarding the reasons for granting a dispensation, the advocate then proceeds to state that, for this purpose, it can be proposed in the first place the probable, or rather, morally certain, impotence of the husband. Several factors suggest a strong presumption of this defect, namely, the husband's testimony in a judicial reconciliation attempt, his obstinacy, the wife's testimony, and the fact that her virginal status remains intact after so many years of married life and after so many unsuccessful attempts at union.

[*Latin ed. p. 735*]

WLADISLAVIEN. 735, and finally, public notoriety, concerning which more witnesses, brought forward, testify. Furthermore, the advocate argues that, when impotence is probably present, a dispensation is not properly and strictly a grace, « but rather an administration of prudential justice, » as Ursaya states in volume 3, page 2, discourse 21, number 104. To this principal reason for a dispensation, other minor and subsidiary reasons are not lacking, such as the impossibility of reconciliation, the danger of incontinence and fornication, which, indeed, provide a sufficient basis for a dispensation, as is widely taught by Doctors, among them Sánchez De Matrim., book 12, dispute 15, memory 19, and Cosci De Separ. thori I, 1, chapter 16, number 219.

OBSERVATIONS.

OBJECTIONS OF THE DEFENDER.

On the contrary, the defender of the marriage argues that the fact of the

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lack of consummation has not been sufficiently proven, firstly because the plaintiff herself does not seem to have spoken definitively on this point. She states: « In the first month... there was an attempt to consummate the marriage, which, however, for reasons which I cannot clearly explain, could not be perfectly accomplished. » Furthermore, the doctor Wygrzywalski, one of the witnesses officially called, testifies: « Two years ago, when I examined the body of the Lady Stronczynski, for the purpose of later providing testimony to introduce a cause for invalidating the marriage, the genital parts appeared as if there had been no conjugal intercourse: because I found the hymen in the form of a ring, encircling the opening of the uterus. I also believe that, with the male parts being less developed, both the due act and the conception of a fetus would be possible in the state in which I found Lady Stronczynski. » Moreover, the plaintiff is shown to be lying in her testimony; for, when she had spoken « about the impotence of Mr. Stronczynski » with her sister Julia Rogowka, Alexandra Segno, and Iosepha Wowicka, the former declared « that she knew nothing about the impotence of Mr. Stronczynski » and that she had only heard from her sister that her husband « did not want to share a bedroom, did not want children, and that doctors had forbidden him all conjugal relations. » The latter, however, stated that...

[*Latin ed. p. 736*]

736. WŁADISŁAW AVIEN. The actress "did not openly complain about the conjugal duty; she only acknowledged that she did not expect to have children because of her husband; and on this matter... she lamented." Finally, the third witness stated that she had often heard the actress say, "I am unhappy, and my husband does not want to have children." "Never," the witness continued, "did Felicia openly confess: I know nothing about the impotence of Mr. Stronczynski." After these statements, the defense attorney laments that, although the actress had informed the judge that she could name relatives of her husband to whom a guarantee could be offered, this was nevertheless omitted, contrary to what the Instruction of the Sacred Congregation of the Council of 1840 prescribes. And therefore, among the seven witnesses summoned by order of the court to supplement the testimony of the seventh witness, only the father of the husband was present among the closest male relatives. Moreover, when the actress stated in court that the husband's father had once consulted her in writing about the possibility of dissolving the marriage, and that she still had these letters, the judge did not request to see this document. This omission seems serious, especially since, when the husband's father was questioned about this matter in court, he replied: "I do not remember ever having consulted about dissolving the marriage, but I was certainly convinced that they should be separated, because their characters were too different; I gave no advice." Nor is the testimony of the experts more reliable. Indeed, the

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midwives who examined Felicia's body did not record anything in writing, but only orally testified in court, after a period of time, about what they had observed, which is very dangerous, and contrary to the instruction of the Sacred Congregation of the Council. For memory is unreliable, and the minute details by which virginity is proven cannot be described in the same way after a period of time as if an immediate written testimony were given. Therefore, the judgment of the doctors, insofar as it was based on the oral testimony of the midwife, should be considered less reliable. Moreover, both the doctors and the midwives seem to lack sufficient experience; they appear to rely too much on the existence of the hymen, and to overlook signs of artificial corruption.

[*Latin ed. p. 737*]

POLAND. It is asserted that a woman cannot be a virgin, and that at the same time, the consummation of marriage is said to occur and to be confused with pregnancy. Indeed, Doctor Biengansli states: "I judge that the Lady Stronczynski is a healthy person, of a nervous temperament and stout build, who has never been pregnant, nor has she given birth, and therefore is a virgin." Furthermore, all the midwives and doctors, speaking as one, declare that there are no means by which virginity can be feigned, as the first midwife states; that after the marriage, the virginal hymen is not found, and that traces of carnal intercourse remain, as the second continues; and even if a woman has consummated her marriage only once, as the third explains. These opinions are affirmed by three doctors. However, the defender argues that these assertions are false, citing the authority of Zacchiae, *Quaestiones Medicae Leges*, Book 4, Title 2; Budin, *Obstetrica et Gynaecologia*, Paris, 1886; and Martineau, *Deformities Vulvaires*, Paris, 1886, page 30, who assert that the female genitalia can be constricted by means of medication, and that not only can marriage be consummated, but conception can also occur with the hymen remaining intact. Therefore, the defender of the sacrament believes that the lack of consummation of the marriage in this case cannot be sufficiently proven.

Having stated the above, the purpose was to resolve the doubt: Whether it is necessary to consult with the Most Holy Congregation regarding a dispensation from a marriage that is valid but not consummated in this case.

RESOLUTION. The Sacred Congregation, after deliberation on February 22, 1890, decided to respond: Affirmative, forbidding the man from entering into another marriage without the consent of the Sacred Congregation. *Acta, Vol. XXII, fase. OCLXIV. 47*.

[*Latin ed. p. 738*]

738 FROM THE SACRED CONGREGATION OF RITES: QUESTIONS concerning the votive Mass of the Most Holy Heart of Jesus, and other mat-

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ters. MONTIS POLITIA. The present editor of the Calendar for the Clergy of the Diocese of Montis Politia, with the consent of his Most Reverend Bishop, humbly proposes the following questions to the Sacred Congregation of Rites, namely: Question I. Is the votive Mass of the Most Holy Heart of Jesus, which, according to the Decree of June 28, 1889, is permitted to be celebrated without the Gloria, without the Creed, and with three Collects, in churches where morning devotions in honor of the same Divine Heart are held, to be celebrated according to the rite by which votive Masses are solemnly celebrated, with the Gloria and the Creed, and with a single Collect? Question II. In the same Decree, it is stated that Second Vespers of the Octave of the Body of Christ are to be said without any commemoration. Since the editors of the Calendars are not in agreement in interpreting these words, the question is asked whether these words exclude the commemoration of the following feast of the Most Holy Heart, or even the commemoration of some other Saint on that day, in the simple form that occurs this year for Saint John by Saint Facundus? Question III. Is the chapter of Vespers to be said on the feasts of the seven Founders of the Order of Servites of the Most Blessed Virgin, and of Saint Catherine Fliscae Adurnae, to be said also at Terce? Question IV. When the Bishop, on a weekday during the celebration of the Lord's Supper, proceeds twice from the altar to the table for the preparation of the sacred oils, and returns to the altar, should he use his pastoral staff? Question V. When blessing the people after Communion outside of a Mass, and when absolving the faithful in the Sacrament of Penance, should the Bishop make only one or three crosses? Question VI. If a sacred Ordination is performed on Holy Saturday, are the Litanies to be said to be those assigned in the Missal for such a day, or are they the customary ones found in the Roman Pontifical? Question VII. Do dioceses to which the Office of the Most Blessed Virgin Mary under the title of Good Counsel has been granted, have to adopt the new Office with

[*Latin ed. p. 739*]

From the Sacred Rites, 739, they respond! Was the Mass for the same Feast approved by the Sacred Congregation in the year 1884? And the Sacred Congregation itself, upon the report of the undersigned Secretary, and with the fervent desire of another from the Masters of the Apostolic Ceremonies, after mature deliberation, judged it fitting to respond to the following questions, namely: Regarding I. Negatively to the first part; affirmatively to the second. Regarding II. Both commemorations are to be omitted. Regarding III. Affirmative. Regarding IV. Affirmative. Regarding V. The rubrics of the Roman Ritual are to be observed. Regarding VI. They are to be said in the case of the Litany assigned in the Missal, with those which the Bishop must recite concerning those to be ordained, for the benefit of all the faithful departed, etc. Regarding VII. Affirmative. And thus it responded,

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declared, and commanded to be observed on the 20th of May, 1890. f. CAL Card. ALOISI MASELLA, S. R. C. Pref. VINCENTIUS NUSSI, Secretary. Circular letters, in which it is stated that it is not permitted to expose, in the same church, images or statues referring to the same heavenly being; and this rule was kept in mind by the Sacred Congregation regarding certain doubts concerning the image of the Mother of God venerated in the Temple of Vallis Pompeianorum. (1) It is always instilled by this Sacred Congregation of Rites that, in the same church, and even more so in the same altar, two paintings or statues representing the same Saint cannot be exposed to public veneration, and, if it concerns the Most Holy Virgin, representing the Mother of God under the same title. This principle, which admits of no exception, was kept in mind by the Sacred Congregation when, with a Decree of February 24th of the current year, it responded to certain doubts proposed by the Procurator General of the Order of Preachers regarding the exposure in some church of another image of the Most Holy Virgin of the Rosary, which bears the same title. (2) You have doubts about which we are speaking, see Volume, page 501.

[*Latin ed. p. 740*]

740 FROM THE SACRED CONGREGATION concerning that which has a special cult in the Church recently erected in the Valley of Pompei. Indeed, whatever may be the particular place where the Most Holy Mary is thus honored, and the singular graces and favors which the Lord deigns to grant to the faithful who flock there, or who turn to the Virgin venerated there, it is beyond all doubt that that Image represents, even in its accessories, except for slight variations, the Mother of God always entitled the Most Holy Rosary. Therefore, it cannot be exposed in churches and public chapels where another sacred Image of the same title receives veneration and worship from the faithful. And so, although after the publication of the aforementioned Decree many petitions have been addressed to the Holy Father to implore that the other Image, to which the denomination from Pompei is added, be allowed in some church, together with the ancient Image of the Most Holy Virgin of the Rosary, it has not been possible to derogate from the aforementioned principle, which informs the responses given by the Sacred Congregation on this matter. These responses, with regard to the doubt concerning Indulgences, confirm what has been said so far, namely that the two sacred Images are one and the same thing; therefore, without excluding new Indulgences that may be granted by the Holy See, the already granted ones are referred to the conditions prescribed for that purpose. Meanwhile, in order to put an end to such inquiries, and also to always more strongly recall the liturgical norms to be followed in such cases, this Sacred Congregation, having received the orders of His Holiness, has deemed it appropriate to direct this letter to Your Eminence, with full confidence that Your Eminence will make use of it to contain

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within proper limits the devotion, which is moreover so commendable and salutary, towards the Most Holy Virgin of the Rosary. The undersigned Cardinal Prefect, kissing Your Eminence's hands most humbly, has the honor of reaffirming himself with profound respect. Of Your Eminence, Most Reverend, Rome, May 20, 1890.

[*Latin ed. p. 741*]

From the Sacred Rituals (Latin Version 741), the ecclesiastical rule is this: It is not permissible, continuously insisted upon by this Holy Congregation, that in the same church, and all the more so in the same altar, two or more depictions, or statues, referring to the same heavenly figure, or, if it concerns the Most Holy Virgin, the Mother of God, invoked under the same title, be exposed for public veneration. This rule, which admits of no exception whatsoever, was kept before the eyes of the same Sacred Congregation when, with a decree published on February 24th of this year, it responded to certain doubts proposed to it by the Reverend General Procurator of the Order of Preachers, concerning the practice in a certain temple, where the image of the Most Holy Virgin of the Rosary, already venerated, was to be placed alongside another, bearing the same title, and which also enjoys veneration in the temple recently built in the Valley of Pompeii. Indeed, whatever may be said about that particular place where the Most Holy Virgin Mary is honored with such devotion, and about the special benefits and graces that God deigns to grant to those who visit or turn to the Virgin venerated there, it is beyond doubt that that image refers to the Mother of God, equally called the Virgin of the Rosary. Therefore, it cannot be placed in churches, or in any public sacred buildings, where another image of the same name already receives veneration from the faithful. Consequently, although after the publication of that decree, many requests have reached the Roman Pontiff, imploring that in a certain church, alongside the ancient image of the Most Holy Virgin of the Rosary, another be allowed to be placed, to which the name of Pompeii is added, this Holy Congregation has not been able to derogate from the announced rule, a decision which is wonderfully supported and explained by the responses repeatedly given by this Holy Congregation. These responses, which pertain to sacred Indulgences, strongly confirm what has been said above; namely, that those two images of the Most Blessed Virgin are the same. Therefore, unless new Indulgences, which may be granted by the Holy See, exclude it, the Holy Congregation declares that the conditions previously prescribed for this purpose must be observed, as far as those already granted are concerned. Meanwhile, in order to put an end to such requests, and to remind everyone, once again, of the observance of the liturgical rule in similar cases, this Holy Congregation, having received mandates from the Roman Pontiff, has considered it appropriate to send these letters to Your Eminence, confident that you will wisely use them to contain, within proper limits, that devotion

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to the Most Holy Virgin of the Rosary, which is otherwise so salutary and worthy of praise.

[*Latin ed. p. 742*]

From the Sacred Congregation of Rites. The undersigned Cardinal, Prefect, with the utmost humility kisses the hand of Your Eminence, and again declares his reverent obedience to Your Eminence. On the 20th of May, in the year 1837.

The most obedient servant,

A DOUBT concerning the rite to be used in the blessing of water, either on the vigil or on the feast of the Epiphany.

FROM VARIOUS DIOCESES.

Since in some dioceses the custom prevails of performing the solemn blessing of water, on the vigil or on the feast of the Lord's Epiphany, with a particular rite; the Sacred Congregation of Rites had previously inquired whether such a rite could lawfully be observed.

The aforementioned Sacred Congregation, before defining such a question, desired that it be thoroughly examined in every respect, along with the opinions of highly learned men in liturgical matters, especially concerning the variety of this rite, which prevails in the aforementioned churches, due to the difference between the Latin and Greek liturgies, from which the rite itself is derived; these opinions, along with other documents pertaining to the matter, collected by the Most Reverend Father, the Promoter of the Sacred Congregation of the Holy Office, were submitted to the Sacred Congregation for discussion, and a new draft of the aforementioned rite was also prepared by him.

After these matters had been duly compared, the Most Eminent and Reverend Fathers, Prefects of the Sacred Congregation for the Preservation of Rites, assembled in ordinary meetings on the designated day, instituted a careful examination of the nature of the aforementioned rite, and of its derivation from the Eastern Church, as well as of the reasons which have favored its use in some churches of the Latin rite, after having also considered the various formulas commonly used; and finally, after mature deliberation, they considered the reasons by which such a rite could be permitted, or tolerated, at least in places where it has been introduced, but prohibiting its use elsewhere, since it is entirely proper to the Greek Church, and is entirely foreign to the nature of the Latin rite.

Therefore, through me, the undersigned Cardinal, Prefect of the aforementioned Sacred Congregation, the following question was proposed: "Is it permissible to use, in the blessing of water, which is customarily performed with some solemnity on the vigil or on the feast of the Epiphany in some places, a rite other than that prescribed by the Roman Ritual for

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blessing water?"

The Most Eminent and Reverend Fathers, Prefects of the Sacred Congregation for the Preservation of Rites, after mature deliberation on the matter, decided to respond: "No."

On the 17th of May, 1890.

Which is written by the undersigned Secretary of the Most Holy Congregation.

[*Latin ed. p. 743*]

FROM THE SACRED RITUALS, 743, having been presented to Pope Leo XIII, His Holiness approved and confirmed the decree of the Sacred Congregation. On June 11th of the same year. L. F. S. C. CARDINAL ALOISI-MASELLA, Prefect of the Sacred Congregation. VINCENT NUSSI, Secretary of the Sacred Congregation.

FROM THE SACRED CONGREGATION FOR INDULGENCES: PRAYER to Jesus Christ Crucified, for the benefit of the faithful departed.

MOST HOLY FATHER, Now that the following prayers are beginning to be recited by the faithful, many of them humbly beseech Your Holiness to deign to grant them certain indulgences, which may be applied for the benefit of the souls detained in the fire of Purgatory.

PRAYER to Jesus Christ Crucified, for the benefit of the Souls in Purgatory.

Jesus my God, through that copious sweat of blood which You shed in the Garden, have mercy on the souls of my closest relatives who are suffering in Purgatory. Pater, Ave, and Requiem.

Jesus my God, through that cruel scourging which You endured, bound to the Column, have mercy on the souls of my relatives and friends who are suffering in Purgatory. Pater, Ave, and Requiem.

Jesus my God, through that crown of most acute thorns which pierced Your most holy temples, have mercy on the soul that is most abandoned, deprived of prayers, and on that soul which is furthest from being freed from the pains of Purgatory. Pater, Ave, and Requiem.

Jesus my God, through those painful steps which You made with the Cross on Your shoulder, have mercy on the soul that is closest to emerging from Purgatory, and for the pains which You suffered together with Your most holy Mother Mary, as You encountered her on the roads of Calvary, deliver the souls who were devoted to this dear Mother from the pains of Purgatory. Pater, Ave, and Requiem.

Jesus my God, for Your most holy Body, laid upon the Cross, for Your most holy Feet and Hands, pierced with hard nails, for Your cruel death, and for Your most holy side opened by the lance, use Your mercy and compassion towards those poor souls, deliver them from the atrocious pains

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which they suffer, call them, and admit them.

[*Latin ed. p. 744*]

744 FROM THE DECREE OF INDULGENCES: May the embraces of your most sweet souls in Paradise deliver you. Pater, Ave, and Requiem. Souls tormented by a thousand pains, the most atrocious, I, your most devoted servant, promise never to forget you, and to pray continuously to the Most High for your liberation; to this offering which I make to you, I implore you, correspond by obtaining from God, with whom you have so much power for the sake of mortals, that He may deliver me from all the dangers of the soul and the body; I ask for myself and for all my relatives, friends, benefactors, and enemies, the forgiveness of sins, the salvation of the soul, and therefore, perseverance in good. Deliver us from all misfortunes, miseries, illnesses, anxieties, and troubles. Obtain for us peace of spirit, assist us in all our actions, help us promptly in our spiritual and temporal needs, console us, and defend us in our dangers. Pray for the Supreme Pontiff, for the exaltation of Holy Church, for the peace of the nations, for Christian princes, for the tranquility of the peoples, and may it come to pass that one day we may together enjoy Paradise. So be it. Jesus, have mercy. The Most Holy Lord Pope Leo XIII, in audience, on the 14th of December, 1889, granted, with paternal benevolence, to all the Christian faithful who recite the aforementioned prayer with at least a contrite and devout heart, the Indulgence of one hundred days, applicable also to the deceased, to be obtained once a day, for all time, without any dispensation, notwithstanding any contrary regulations. Given in Rome, from the Secretariat of the aforementioned Holy Congregation, on the 14th of December, 1889. C. Card. CRISTOFORI, Prefect, Archbishop of Nicopolis, Secretary. (Latin Version) PRAYER to Jesus Crucified, for the support of the faithful departed. 1. O Jesus, through that copious bloody sweat which You shed in the garden, have mercy on the souls closely connected to me by the bond of kinship, who are suffering in the fire of Purgatory. 2. O Jesus, who, bound to the pillar, were so cruelly scourged with whips, have mercy on the souls of my relatives and friends, who are suffering in the fire of Purgatory. 3. O Jesus, through that crown of the sharpest thorns, with which Your most sacred temples were pierced, have mercy on the soul for which the prayers of the faithful are least efficacious, and which the fire of expiation will torment for the longest time.

[*Latin ed. p. 745*]

EX S. C. INDULGENTIARUM 745 4. O Iesu, per illud dolorosum iter, quod fecisti super crucem ad Calvariam, miserere animae quae citius ab illo igne evolvatur, et per eum dolorem, quem suscepsisti in occursu Matris tuae dolentis, erue animas fidelium defunctorum, qui pie Eam coluerunt. 5. O Iesu, per Sacratissimum Corpus, Cruci affixum, per

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pedes, perque manus duris clavis transfixas, per crudeliter mortem, per Sanctissimum Latus lancea perfossum, miserere animarum earum, libera eas et ad amplexus tuos in Paradiso admitte. O animae fideles, tantis fluctibus poenarum laetatae, addictissimus ego vobis, semper memor vestri, divinam vobis misericordiam non desinam implorare: hoc promitto. At vos, quaeso, precamini Deum, ut a cunctis animae et corporis me periculis eripiat, ut mihi, cognatis, amicis, benefactoribus, inimicis meis veniam peccatorum, salutem aeternam atque adeo perseverantiam in bono concedat; ut calamitates avertat a nobis, aerumnas, morbos, angustias et labores, etque animi tribuat pacem: vos suffragiis apud Deum vestris, adeste agentibus nobis: afferte opem egentibus, solam en laborantibus, praesidium periclitantibus. Orate Deum pro Pontifice Maximo, pro exaltatione Sanctae Ecclesiae, pro nationum concordia, pro Principibus Christianis, pro tranquillitate populorum, ut omnes una aeternis gaudiis tandem perfruamur. Amen. EX S. CONG. S. R. U. INQUISITIONIS DUBIA quoad privilegium in favorem fidei concessum. I. Quaeritur utrum dispensatio a vinculo Matrimonii, quae dari solet ab Ecclesia, positis ponendis, post baptismum unius partis, potest applicari in casu, in quo, post baptismum unius, duae partes non cessarunt habere connexionem, et consummarunt Matrimonium sicut ante baptismum? II. Matrimonium valide contractum ante baptismum inter duos infideles potestne dissolvi, quando, post baptismum unius, pars infidelis promittit quidem se non inquietare mulierem baptizatam in professione Christianitatis, sed ille recusat dimittere alias uxores illegitimas, vel non vult promittere se servaturum leges Evangelii circa monogamiam? III. In casu praecedenti, si Matrimonium dissolvi potest, mulier baptizata teneturne recurrere ad dispensationem pro dissolutione Matrimonii? IV. Mulier baptizata potestne recurrere ad dispensationem, quando praenoscit, quod, facta dissolutione Matrimonii, educatio prolis susceptae penitus erit in potestate viri eius infidelis? V. Si dispensatio dari non potest, mulier legitima, quae fit

[*Latin ed. p. 746*]

S. R. U. INQUISITIONIS 746: A Christian woman, after her conversion, can she continue to live with an unbelieving husband, who also keeps other illegitimate wives in the same house?

VI. Can a Christian girl, having obtained a dispensation from disparity of cult, lawfully contract marriage with an unbeliever, who does not promise to abstain from polygamy in the future?

VII. Bertha, still an unbeliever, contracts marriage with an unbeliever immediately upon reaching the age of puberty; and after two years, she leaves her husband, having had no children, and they both enter into other marriages; indeed, the man takes on many wives, and becomes a polygamist. But now, the woman, having reached old age, having heard a missionary,

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desires to be baptized: can this woman be dispensed from the bond of marriage, contracted with her first husband, without the consent of him, and thus remain with her second husband, from whom she has had children?

VIII. Among certain unbelievers, a detestable custom prevails, according to which, after a man has committed adultery with another woman's wife, he gives a remedy to the adulterous wife, the effect of which will be to bring about the death of the legitimate husband, simply because he will then have intercourse with his own wife. Therefore, it is asked, whether a legitimate husband, who does not wish to live with his wife after she has committed adultery, can, if he converts to the faith, be dispensed from the bond of marriage that he contracted in infidelity, and take another wife, even if the unbelieving adulterous wife herself were to be baptized?

S. OFFICII, 11 JULY 1886, TO THE VICAR APOSTOLIC OF NATAL. The E.R.R. PP. answered the individual requests in the following manner, with these caveats:

1. The above-mentioned requests should be understood in light of the privilege granted by Christ the Lord in favor of the faith, and promulgated by the Apostle Paul in 1 Corinthians 8:12 and following.

2. This divine privilege consists in the fact that, if a marriage is lawfully contracted and consummated in infidelity, and if one of the spouses embraces the Christian faith, while the other remains obstinate in his infidelity, it is permissible for the converted spouse to live with the converted spouse, or, if the converted spouse wishes to live together, but not without offending the Creator, that is, not without the danger of corrupting the faithful spouse, or not without reviling the Holy Name of Christ, and despising the Christian religion, then it is permissible for the converted spouse to pass on to other vows, after the unbelieving spouse has been warned and has absolutely refused to live with him, or has shown that he intends to live with him, but not without offending the Creator.

3. According to the same divine privilege, the spouse who has been converted to the faith is not, at the very moment of his conversion, considered to be released from the bond of marriage contracted with the unbelieving spouse who is still alive, but rather, if the unbelieving spouse refuses, he acquires the right to pass on to other marriages, with the faithful spouse. However, the bond of marriage is only dissolved when the converted spouse effectively enters into other marriages.

[*Latin ed. p. 747*]

SECTION VII. OF THE ROMAN INQUISITION, 747 A.D. I. If it should happen that, while a marriage between two non-believers is in effect, one of the spouses is converted to the faith and receives baptism, and peacefully, and without offense to the Creator, cohabits with the non-believing spouse, and if afterwards the non-believing spouse, although having given

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a reasonable motive for leaving, refuses to be converted, but moreover departs from the peaceful cohabitation because of a broken faith, or hatred of religion, or because he does not wish to cohabit without offense to the Creator, or because he attempts to lead the faithful spouse to mortal sin, or to infidelity, then it is permissible for the faithful spouse to pass to other vows.

AD II. If the case concerns a pagan wife of a pagan, who is converted, then, after inquiry, if she refuses to be converted, or to cohabit without offense to the Creator, and therefore to cease from concubinage, which certainly cannot be considered without offense to the Creator, she may make use of the privilege granted in favor of the faith.

AD III. When the non-believing spouse, after proper inquiry, absolutely refuses to cohabit with the spouse who has been converted, or shows that he intends to cohabit with him, but not without offense to the Creator, or without wishing to abstain from concubinage permanently, then the spouse who has been converted, after the judgment of a higher ecclesiastical authority, must be separated from the non-believing spouse, and may, if he wishes, make use of the privilege or divine dispensation granted in favor of the faith, and thus pass to other vows with a faithful person.

AD IV. If it is entirely impossible for the spouse who has been converted to remove the children from the power of the other spouse, who remains obstinate in infidelity, and it is not permissible, after proper legal and formal inquiry, to cohabit with him, either because he does not wish to, or because he wishes to cohabit without offense to the Creator, then, after the judgment of a higher ecclesiastical authority, it is permissible to pass to other vows, always maintaining the obligation, by which he is always bound, to care for the Catholic education of the children, if in any way he can.

AD V. Regarding the foregoing.

AD VI. Missionaries, who, by apostolic concession, possess the faculty of granting dispensations regarding disparity of cult, should take care not to grant a dispensation unless the danger of polygamy is removed.

AD VII. When the case, as is supposed, concerns a legitimate marriage contracted in infidelity, the woman must be completely and effectively separated from the second husband; and if, for very serious reasons and real impotence, she cannot be separated in regard to habitation, she must at least be separated in regard to table and customs; having no further dealings, or carnal intercourse, with the same husband. Then she should be instructed, and especially notified, that, having received baptism, she is not dispensed from the obligation she has to return to her first husband; and to the extent that, after proper instruction, it appears that she is moved to receive baptism for a true reason of religion, she may be admitted to baptism immediately, and after she has received it, she must be completely

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questioned, and asked whether she wishes to be converted, or

[*Latin ed. p. 748*]

748 The SACRED ROMAN CONGREGATION, without causing offense to the Creator, will be informed by the Reverend Father, Vicar Apostolic, of all that transpires when he is about to dissolve a marriage, and of all the consequences. But if it should truly appear, at least in summary fashion, and without a formal trial, that the spouse has been abandoned by the other to such an extent that he cannot be legitimately warned, or that the warning given within the time specified in the warning itself has not been heeded, or that, although the unfaithful spouse can indeed be reached, he cannot be admonished in a Christian manner without the evident danger of inflicting serious harm to him or to Christians, provided that such harms can be removed with necessary circumspection and caution, the Vicar Apostolic will report all of these things to the Apostolic See, stating the names explicitly and setting forth the most serious reasons for obtaining a dispensation regarding the impediment arising from a difference in religion, if the alleged second spouse still persists in infidelity, and he will relate all the circumstances of the matter, the persons involved, and the facts, so that a safe course of action may be followed in a matter of such grave importance. AD VIII. Marriage contracted in infidelity is, by its very nature, indissoluble, and it can only be dissolved with regard to the bond by virtue of a privilege granted in favor of the faith, conceded by our Lord Jesus Christ, and promulgated by the Apostle Paul, when one of the spouses embraces the Christian faith, and the other utterly rejects the faith, and does not even wish to live peacefully with the converted spouse, without causing offense to the Creator; therefore, there is no place for dissolving the bond of a marriage legitimately contracted in infidelity, when both spouses have received baptism or intend to receive it. LETTER to the Archbishop of Cambray, in which it is stated that any surgical operation which directly kills the fetus or the pregnant mother is illicit. In the year 1886, my Predecessor submitted several questions to this Supreme Congregation regarding the licitness of certain surgical operations related to craniotomy. After careful consideration, the Most Eminent and Reverend Fathers Cardinals, together with myself, the General Inquisitors, ordered that a response be given on the fourth day of the current month: "It cannot be safely taught in Catholic schools that a surgical operation, which they call a craniotomy, is licit, as was declared on May 28, 1884, (1), and that any surgical operation which directly causes the death of the fetus or the pregnant mother." And I make this known to Your Eminence, so that it may be communicated to the professors of the medical faculty of the Catholic University of Isola. In the meantime, I pray that all that is good and happy may be granted to you by the Lord. Rome, August 19, 1889. Your Eminence's most devoted servant in the Lord, R. CARD. MONACO (1) This declaration was reported in this

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volume, XVI, 558.

[*Latin ed. p. 749*]

S. R. U. INQUISITIONIS 749. *Litterae* ad omnes locorum Ordinarios; per quas eisdem facultas indulgetur solvendi a lege ieiunii et abstinentiae fideles, quibus praesunt donec grassetur morbus, qui Europam aliasque regiones Orbis pervasit. Apostolicae potestatis et benignitatis curas ad se vocavit conditio et genus morbi, qui hoc tempore non Europam modo, sed alias Orbis regiones late pervasit. Hoc enim grassante malo permotus Sanctissimus Dominus Leo XIII, pro summo studio quod gerit, ut non solum in iis quae animi sunt, sed in iis etiam quae sunt corporis bono Fidelium consulat, Suae sollicitudinis esse putavit, ea praesidia quae in sua potestate sunt conferre Fidelibus, quae corporis vitaeque incolumitati adversus morbi vim dominantis prodesse posse visa sunt. Quamobrem ministerio Sacri Consilii Supremae Romanae Universalis Inquisitionis utens, omnibus Archiepiscopis, Episcopis et locorum Ordinariis catholici Orbis, cunctis in regionibus quibus morbus, de quo supra dictum est, incubuit, Apostolica auctoritate facultatem impertit, ut Fideles, queis praesunt a lege solvant qua abstinentiam et ieiunium servare tenentur, donec iisdem in locis ipsorum iudicio, hanc Apostolicam indulgentiam publicae valetudinis ratio et conditio requirat. Optat autem Sanctitas Sua, ut dum Fideles Apostolica hac benignitate utuntur, studeant impensius piis vacare operibus, quae ad divinam clementiam demerendam valent. Quapropter eos hortatur, ut sublevandis caritate egenis, celebrandis ad preces et sacra officia templis, frequentique Sacramentorum usui ad Deum exorandum placandumque studiose dent operam, cum aperte pateat crebra, quibus affligimur mala, ad divinam iustitiam esse referenda, quae ob corruptos mores et late exundantem flagitiorum colluviem iustas poenas ab hominibus expetit. Romae, die 30 Ianuarii anno 1890. R. CARD. MONACO.

DUBIUM quoad prohibitionem de non miscendis cibis vetitis. Utrum per Indultum Apostolicum ministerio S. R. U. Inquisitionis die 30 Ianuarii anni currentis latum, quo Ordinariis facultas committitur solvendi fideles a lege abstinentiae et ieiunii, sublata sit etiam prohibitio de non miscendis cibis?

Feria IV, die 26 Februarii 1890.

Emi et Rmi PP. Inq. responderunt: Negative, sed tempore Quadragesimae et ieiuniorum infra annum, prohibitam esse promiseuitâtem ciborum vetitorum simul et permissorum in eadem comestione.

[*Latin ed. p. 750*]

750 A SUMMARY of the acts contained in this volume, comprising twenty-two items: LETTERS AND ACTS OF THE ROMAN PONTIFF. The Encyclical Letter of His Holiness Pope Leo XIII, concerning the patronage of Saint Joseph, together with the Virgin Mary, for imploring help in times

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of difficulty, page 65. The Brief of His Holiness Pope Leo XIII, by which the College of the Octave is increased in dignity and rights as a Catholic University, page 201. Apostolic Letters in the form of a Brief, by which it is permitted that Peter Aloysius Mary Chanel be called by the name of the Blessed, and that his relics be offered for public veneration, page 257. Letters of His Holiness Pope Leo XIII to the Cardinal Vicar in Rome, concerning the spiritual retreat to be undertaken by all the Roman clergy, without exception, page 337. Encyclical Letters of His Holiness Pope Leo XIII concerning the principal duties of Christian citizens, page 385. Apostolic Letters in the form of a Brief, by which it is permitted that John Gabriel Perboyre be called by the name of the Blessed, and that his relics be exposed for the public veneration of the faithful, page 405. The Bull of His Holiness Pope Leo XIII by which the Dioecesis Luganensis is founded, page 449. Apostolic Letters of His Holiness Pope Leo XIII concerning the establishment of a college of Bohemian clerics in Rome, page 458. Letters in the form of a Brief, by which it is decreed that the 19th of March, the feast of Saint Joseph, be observed as a holy day throughout Spain and in regions subject to it, page 462. A Letter of the Holy Father Pope Leo XIII to the Bishop of Vigevano, in which he laments the affront done to him, having been summoned before a lay magistrate for the performance of a sacred office, page 705. FROM THE CONSISTORY ACTS. Concerning the Consistory held on December 30, 1889, page 321. FROM THE HOLY CONGREGATION OF THE COUNCIL. Concerning the Legates of the Councils of Foroiulien and Nicaea, or Aquileia; the matter concerns to whom a delegate should be assigned, page 3. Concerning the fourth funeral rites of Interamna; it is decided whether the burying church should provide the parish church with the fourth vestment, which is worn around the coffin during the time between the procession and the funeral, page 15. Concerning the parochial rights of Saint Agatha of the Goths; it is resolved to grant...

[*Latin ed. p. 751*]

SUMMARY OF CASES: While acting as vicars, the curates exercised all parochial rights, which the canons sought to claim. »22 Panormitano: The institution is denied in a canonical prebend, which a priest had obtained from the civil government, without the consent of the Ordinary. »34 Barchinonen: Regarding the commutation of a will, the requested grace is granted, in part. »43 Concor dien: Regarding the division of a parish and the erection of a new one, the division of a parish and the erection of new parishes are permitted, provided that due consideration is given to the appropriate resources for each parish being established. »69 Tarentina: Regarding the commutation of a will, the requested grace was granted, but only with the condition that the Bishop ensure the implementation of the will as far as possible. »81 Nullius Montis Cassini: Regarding a translation,

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the requested translation of a parish priest to another parish is permitted, after a prior examination before three pro-synodal examiners. »82 Veneten: Regarding marriage, the sentence of the Parisian court is confirmed, which declared the marriage null and void due to coercion and fear. »85 Balneoregien: Regarding the commutation of a will and absolution, the requested grace of commutation of the will and absolution is granted. »128 Neapolitana: Regarding a concurrence, the question is whether the judgment of the court regarding the concurrence should be confirmed or annulled, in a case where a candidate was rejected from the list of those to be examined because he did not deliver a homily according to the text of the Gospel that was proposed. »131 Montisalti: Regarding a composition, the requested grace of composition is denied. »137 Melevitana: Regarding the prosecution of an appeal concerning fatal matters, the declaration is extended by the Sacred Congregation regarding the appeal to be prosecuted. »152 Salernitana: Regarding the faculty of binandi, the faculty of binandi is granted, with the existing circumstances remaining in place. »154 Anagnina: Regarding the restoration of the revenues of a collegiate mass, the question is about the manner of restoring the revenues between the canons and the beneficiaries, when civil law has reduced the canonical prebends to thirteen, and the prebends of the beneficiaries to six. »156 Fulginaten: Regarding an indult of jubilation, an indult of jubilation is granted to a canon who, after diligently serving for 40 years, is now burdened by old age and various infirmities. »204 Granaten: Regarding burdens, the Ordinary refuses to exempt certain burdens attached to a villa, which he receives for the purpose of cultivating it. »207 Apuana: Regarding marriage, no marriage is declared, due to the detection of a consanguinity impediment in the third degree between the betrothed. »220

[*Latin ed. p. 752*]

752 Theatina: Concerning the SUMMA ACTORUM of the Wladislavian matrimonial dispensation; a dispensation is granted concerning a marriage that is valid but not consummated.

263 Montis Regalis: Concerning the distribution of goods; the question is whether a new article should be added to the statutes of the Chapter, stating that a canon who is absent from the choir, due to the exercise of his ministry, is to be considered present.

279 Agrigentina: Concerning marriage; it was declared that the marriage had not been validly begun.

358: Concerning revenues; the matter under discussion is how the distribution of revenues should be carried out among the canons, revenues which the demesne had received and then restituted.

237: Colonien: Concerning distributions; a canon who is a penitentiary, being absent from the choir for the sake of his ministry, receives both ordinary and extraordinary, or fixed and fortuitous, distributions.

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288: Cassanen: Concerning processions; Brixinm: Concerning the diocesan synod; a dispensation is granted so that not all those who have the right to do so may be summoned to the synod, but procurators are excluded.

350: Marsorum: Concerning the election of canons; a dispensation is denied for the election of honorary canons to fill the vacancies of titular canons.

355: Parisien: Concerning marriage; the sentence of the Parisian court is confirmed, concerning the dismemberment of a benefice. Monopolitana: Concerning the reduction and absolution of debts. Tarentina: Concerning burdens, namely, hypothecary ones.

412: Concerning cautions; a dispensation is granted so that the goods of the Order of Saint George may be subject to a mortgage.

414: Praten: Concerning nominations; the manner of providing for the penitentiary is discussed.

416: Montisfalici: Concerning intervention; the right of the Archpriest concerning intervention in chapter meetings is discussed.

428: Concerning capitula; Regien: Concerning the conventual Mass; concerning an unusual custom regarding the conventual Mass.

432: It is resolved that a parish priest may enter the territory of another parish, in order to lead processions, with the permission of the Bishop.

341: And a translation and dismemberment are granted.

361: Parisien: Concerning marriage; a dispensation is granted for a marriage that is valid but not consummated, for just causes.

366: A dispensation is granted from a marriage that is valid but not consummated.

286: Theanen: Concerning the translation of a celebration; Mantuana: Concerning the commutation of a voluntary offering; a dispensation is granted to distribute alms among those present, etc.

464: S. Agathae Gothorum: Concerning the confraternity; the question concerns sacred functions and supplications, and in the note, the Decree of the City and the World is again presented, as it contains the common law concerning questions between Parishes and Sodalities.

465: Parisien: Concerning marriage; no marriage is declared valid due to a defect in the Tridentine form.

477:

[*Latin ed. p. 753*]

SUMMA ACTORUM, I, s. L. Senegal, concerning combinations; the grace of applying a second Mass in satisfaction of a canonical obligation is denied. 499 São Paulo; a doubt concerning the form of a dispensation; it is asked whether all things prescribed in the constitution *Cum illud* concerning the dispensation of benefits should be observed. 513 Ascoli,

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concerning marriage; it was judged that the existence of a marriage, which was begun for jest before a priest and two witnesses, does not exist. 529 Wrocław; a doubt concerning marriage; it is resolved that proof of the status of being free in the case of the uncertain death of a spouse, is not to be moderated according to the form of the benediction of the Constitution. 546 Orleans, concerning indulgences; the Ordinary of Orleans is granted, for one time, the faculty of consulting the statutes of pious foundations of his diocese. 554 Canton of Ticino, concerning legacies; it is permitted that a part of a legacy be added to the endowment of a chapel, for the benefit of the faithful who attend it on feast days, in the parish church which is most distant. 559 Ferentari, concerning the right of patronage; the moderators of the Republic of San Marino are granted the privilege of presenting candidates for a new parish church. 561 Spalato; concerning confraternities; the judgment of the archiepiscopal court, Volume XXII, fascicle CCLXIV, 753, is confirmed concerning the scope of the diocese of Zadar, which had, as if existing, a sodality rightly and formally suppressed by its own Ordinary of Spalato. 585 Salerno, concerning the election of a deputy for the seminary; the election of a deputy for the seminary, made by the clergy of the city, is invalidated, because some canons were present among those who voted. 597 Saint James of Cuba, concerning the age of a penitentiary; it is decreed that having completed the fortieth year is sufficient for obtaining the penitentiary grant. 603 Paris, concerning marriage; a dispensation is granted concerning a marriage that is valid but not consummated due to the impotence of the man. 610 Scepus, concerning marriage; a dispensation is granted concerning a marriage that is valid but not consummated. 618 Drepan, concerning the right of patronage; it concerns the active right of patronage among several patrons. 641 Ferrara, concerning marriage; it is asked whether a dispensation should be granted concerning a marriage that is valid. 656 Concordia, concerning the division of a parish and erection; it concerns how the response of the Sacred Congregation of the day of 1889 should be understood concerning the division of parishes. 660 Magno-Varad, concerning marriage; the grace of a dispensation is granted concerning a marriage that is valid but not consummated. 665 Aversa, concerning a change of will; the requested grace is granted, under certain conditions. 682

[*Latin ed. p. 754*]

754 SUMMA ACTORUM: A case concerning a canon, regarding doubts concerning the nature, rights, privileges, and obligations of canons elected by the Bishop, without provision.

684 Posnanien: Regarding the legate of piety; the question concerns the interpretation of the legate of piety between the Ordinary and the parish priest.

706 Neapolitana: Concerning a dispute; the question is raised again, but

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the previously given judgment is confirmed.

715 Hiparen: Concerning absolution; absolution is granted, under certain conditions, to a beneficiary who had divided the goods of the benefice.

724 Melevitana: Concerning a change of will; permission is granted to convert three debts into a sum at the discretion of the Bishop.

727 Wladislavien: Concerning marriage; a dispensation is granted regarding a marriage that is valid but not consummated.

729 EX S. CONGREG. EP. ET REG.: Asculana Piceni, or Firmana: Concerning the rights of confraternities; the judgment of the Curia of Firmana regarding certain questions between confratres is confirmed.

104 Meliten: Concerning the tax for the Seminary; the nuns are compelled to increase the tax in favor of the Seminary, due to the increase in their revenues.

250 Senen: Concerning an exemption from parochial jurisdiction; it is asked whether lay students and servants residing in an institute for the deaf, under the direction of clerics of the Pious Schools, are exempt from the jurisdiction of the parish priest.

298 Hildesheimen, or Southwarcen: Concerning restitution or compensation; this concerns the right that belongs to the religious Ursulines of Greenwich, etc.

688 EX S. RITUUM CONGREG.: Decree concerning the beatification and canonization of the venerable Servant of God, John Juvenal Ancina, one of the first disciples of Saint Philip Neri, and later Bishop of Saluzzo.

45 Decree concerning the beatification or declaration of martyrdom of the venerable Servant of God, John Gabriel Perboyre, a priest of the Congregation of Saint Vincent de Paul.

48 Conchinchinen: Decree concerning the beatification, or declaration of martyrdom, of Peter Luu, a priest, killed in hatred of the faith.

170 Namurcen: Decree concerning the beatification and canonization of the venerable Servant of God, Julia Biliari, foundress of the Congregation of Sisters of the Blessed Virgin Mary.

171 Doubts concerning the exposition of the image of the Blessed Virgin Mary, which is venerated in the Valle Pompeiorum.

501 Decree concerning the restoration of the cult, formerly granted to the venerable Servant of God, Anthony Mary Zaccaria, founder of the Congregation of Saint Paul the Barnabite and the Angelic Sisters of Saint Paul.

502 Decree concerning the canonization of Blessed John Baptist de la Salle, founder of the Congregation of the Brothers of the Christian Schools.

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[*Latin ed. p. 755*]

SUMMARY OF DECREES: Decree concerning the canonization of

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Blessed Alphonsus of Orozco, of the Order of the Eremites of Saint Augustine, of the Province of Spain. » 564 Decree concerning the beatification and canonization of the Venerable Servant of God Francis Mary Castelli » 694 Decree concerning the beatification and canonization of the Venerable Servant of God Andrea Uberti Fournet, etc. . . » 695 Decree concerning the beatification and canonization of the Venerable Servant of God Mary Margaret Dufrost de Lajammerais, widow of D'Yopville. » 696 Questions concerning the votive Mass for the Most Sacred Heart of Jesus, etc. - » 738 Circular letters, in which it is stated that it is the rule that images or statues depicting the same subject should not be displayed in the same church; and that the Holy Congregation of Rites had this rule in mind with regard to certain questions concerning the image of the Mother of God, which is venerated in the Temple of the Valley of Pompeii » 739 Of several Dioceses. A question concerning the rite to be used in the blessing of water on the vigil or feast of the Epiphany » 742 FROM THE APOSTOLIC PENITENTIAL: A response stating that sons have not been dispensed from abstinence from meat, unless the head of the family has been granted such a dispensation for just reasons. . . » 627 755 FROM THE HOLY CONGREGATION OF INDULGENCES: A prayer to Saint Joseph with an attached indulgence. . . . . » 117 Decree of the City and the World, adding another indulgence to the prayer to Saint Joseph » 254 Decree of the City and the World, granting to the faithful the pious exercise of fifteen Sabbaths to be performed in honor of the Mother of God under the title of the Most Holy Rosary » 304 Rescripts, to which an indulgence is added to the invocation of Saint Ignatius, "Lord, my..." in the prayers composed by Saint Bernardine of Siena and by Saint Aloysius Gonzaga. » 565 A prayer to Jesus Crucified in suffrage for the faithful departed, with a hundred days' indulgence attached. * » 743 FROM THE HOLY OFFICE OF THE INQUISITION: Decree and Instruction concerning the examination of witnesses who are brought forward for marriages. 628 Questions presented concerning the meaning of the aforementioned decree » 631 Decree; questions from several Bishops of France concerning the law of civil divorce » 635 Instruction concerning mixed marriages to the Patriarchs, Archbishops, and Bishops of the Eastern rites » 636 A question; it is resolved that Ordinaries can delegate to parish priests, only for certain cases... the power to grant dispensations.

[*Latin ed. p. 756*]

756 A SUMMARY of actions in cases of extreme necessity, concerning public impediments to marriage.

640 Doubts regarding the privilege granted in favor of the Faith.

745 A letter to the Archbishop of the Camera, in which it is stated that any surgical operation which directly kills the fetus or the pregnant mother is illicit.

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748 Letters to all local Ordinaries; by which the same faculty is granted to the faithful under their care to dispense from the law of fasting and abstinence, as long as the disease which afflicts Europe and other regions of the world persists.

749 A doubt concerning the prohibition against mixing forbidden foods.

749 DECREES from the SACRED CONGREGATION, by which various books are prohibited...

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APPENDICES

Appendix L, in which more decrees of the Holy Office are mentioned.

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Appendix II; the same.

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Appendix III; the same.

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Appendix IV; the same, the same.

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Appendix V; the same.

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Appendix VI; the same.

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Appendix VII; the same.

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Appendix VIII; the same.

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Appendix IX; the same.

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[*Latin ed. p. 757*]

757 GENERAL INDEX OF CONCLUSIONS NOTED IN MOST OF THE ACTS CONTAINED IN THIS VOLUME, THE SUBSTANCE OF WHICH IS AMPLY EXPLAINED OR STATED IN THE INDIVIDUAL ACTS. These conclusions are included under the following terms: Appeal, Benefice, Canon without provision, Concurrence, Deputy, Seminary, Distributions, Bishop, Exemption, Patronage, Marriage, Proper Parochial Vicar, Parochial Vicar concerning the choir, Parish concerning division, Penitentiary concerning age, Funeral portion, Sodality, Taxes for the Seminary.

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Appeal: The useful time for making an appeal in matters of concurrence is ten days from the day of collation, according to the norm of Clement XI, confirmed by Benedict XIV; so that the elected may not be vexed perpetually, and the status of the parishes may not remain uncertain for a long time, page 723. The appeal must be made either by a written document or by the ritual formula of appeal; and it cannot be said that these two ways of appealing are equivalent to simple complaints, which are usually emitted by those who have been rejected, page 724. Therefore, after the lapse of ten days without an appeal, the matter is considered decided, or the presumption of law arises that the judgment has been rendered and the matter disposed of justly; and the condemned party consents to this, ibid. In obscure cases, according to the rule of law, one must consider what is most likely and what usually happens, page 219. It is known that founders, at the very beginning of the foundation, and donors, in imperfect donations, can add a benefit, or honest conditions, to the donation, pages 220. Whatever pertains to the Mass of the Chapter, if it is diminished or increased for any reason, it must tend to the detriment or to the benefit of all the canons of the Mass, page 249. Civil authority completely lacks the right to change the laws of a pious foundation: since the Pope himself intends to religiously safeguard whatever pertains to the pious institution.

[*Latin ed. p. 758*]

758 INDEX GENERALIS: The founders established regulations concerning the disbursement of their funds, ibid. Therefore, if laypersons establish something of their own accord, which also concerns the benefit and favor of the Churches, it lacks all validity unless it has been approved by the Church, ibid. Consequently, it follows that it is futile to order a different distribution among the canons, who share in the common Mass; because the laws of the Church forbid this, and because the ownership of a certain common fund remains with the entire body, not with the individual members of that body, who are all bound to observe the common arrangement, ibid. In the administration of the common Mass, a contract of association is implied; by which means profit and loss equally affect each individual. For a leonine or unjust association would result if one party suffered a loss while another experienced a gain, ibid. Canons without a prebend: Canons legitimately elected, even if they lack a prebend and a salary, are to be considered true canons; so that they may enjoy all the rights and privileges that belong to a canonate, whether the position is filled or vacant, and they are burdened with all the obligations inherent in the same canonate, page 688. Competition: According to the Council of Trent, examiners should reject as many candidates as they find suitable, after a cumulative judgment regarding age, morals, knowledge, prudence, and other requirements necessary for the proper administration of a particular parish, page 146. The composition [of a written exercise] does not pertain to the substance of the competition,

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as is evident from the resolutions of the Sacred Congregation; from which it is clear that it should not be imposed by order, but rather in the manner of instruction, so that each of the candidates writes a composition on a passage from the Gospel, ibid. It is clear from Benedict XIV that the intention of the Sacred Congregation is to urge bishops and to propose to them a method that should be followed solely through counsel and persuasion, not absolutely, with regard to the composition to be written on a passage from the Gospel, ibid. Therefore, if the composition is not ordered, but only suggested, it pertains to the form, and not to the substance; and that which pertains to the form does not destroy the substance if it is lacking, page 147. From the Constitution: The examiners, considering together the expenses, instruction, and other requirements, reject those who are deemed unsuitable by votes, and present the suitable candidates to the Bishop, ibid. Or, as the same Constitution states, the examiners must associate with the doctrine a close bond of morality, seriousness, prudence, service rendered to the Church, and all the ornaments of virtue, ibid.

[*Latin ed. p. 759*]

INDEX GENERALIS 759. Canonicorum, quatenus velint, licet, in congrua sede canonica, defectui formae curandi imputari, si ad Apostolici sententiae chorum pertinuerint, ibid. Consuetudo, ut vim legis habeat, ad appellationem quae interponi debet infra decem dies, si tale sit, pacifica et legitime praescripta esse debet; si iustitia laesa fuerit, ibid. Conventio, secundum normam iuris communis, interpretanda est, quoties verba Deputati Seminarii tam ambigua sunt, ut interpretationem indigerent, pag. 286. Clero civitatis non licet, praesentibus tantum, in choro obnario adesse, quia distributiones ex iure canonico ex consecutione canonicatus tum sunt; attamen, fictione iuris, cathedrali cessant esse pars clerum civitatis quoad hoc ius, pag. 603. Tridentinum enim privilegium eligendi deputatum unum dedit canonicis, separatim a clero civitatis, sententia in choro per Ecclesiae utilitatem; et Actus illius praesentia valet, ibid. In casu fictio, idem operatur ac in casu vero, ibid. Hinc nulla distributio favore illius fieri debet, et praeterea, praeter distributiones ordinarias, etiam extraordinariae, et eleemosynae, quae distribuuntur pro associatione defunctorum, et processionibus, quae fiunt per urbem, nisi obstet voluntas liquida et expressa dantis vel testatoris, ibid. Poenitentiarius merito aequiparatur canonico Theologo explananti sacram scripturam, et Parocho curam animarum exercenti; atqui praesentes, pag. 285. Iis tantum distributionibus et emolumentis exceptis, quae, ex voluntate testatorum, debentur actu tantum praesentibus, ibid. Poenitentiarius tenetur congruis horis se praebere ad confessiones, et confessiones omnium.

[*Latin ed. p. 760*]

INDEX GENERALIS 760. These rights consist in hearing cases, as in the

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place of the Bishop; since, by established law, this person is not bound by a stricter residence than others, but may freely move about to visit, reform, expand, and administer; therefore, while increasing the number of confraternities, he is rightly considered present at the ordinary visitation and has jurisdiction over the choir, and has the right to subject all, and his successors in perpetuity, to ordinary and extraordinary distributions, as the case may be. Ibid. Saving the provisions of common law, which grant the appellant thirty days to petition the Apostles; no one can be subjected to sacramental penances, unless by a patriarchal benefice or by the approval obtained from the Bishop, after prior examination, if he deems it necessary. Ibid., page 34. The Bishops of Melita may, as they see fit, and at their discretion, subject even confessors, who have been approved and are exercising their ministry in the parish church, to a new examination, provided that indications of their unworthiness arise, and that the documents requested are sent to the aforementioned judge for their expertise. Ibid. The extent of the jurisdiction that the Bishop exercises over the sodalities of his Diocese is determined by the decree of their institution or erection. Ibid., page 116. Nevertheless, by law, the Bishops themselves have the power to limit this jurisdiction over the same sodalities, not only in their own churches, but also in the churches of regular canons, in those that concern the administration and fulfillment of duties, or in those that have relations with the Confraters. Ibid. They also have the right to remove officials and ministers chosen by the Confraternities, if they are not suitable and serious objections arise. Ibid., page 117.

It is most important to note the difference between the rights of the parish priest and the Ordinary; for the right of the parish priest is strictly territorial and pertains to the parish; whereas the right of the Bishop is jurisdictional and pertains to the entire Diocese; and thus, the Bishop acts as the parish priest of the parish priests, or as a superior and judge, when the opposition of a parish priest is unreasonable or indiscreet. Ibid.

[*Latin ed. p. 761*]

INDEX (Although the title "Decretalium" 10, book 3 obliges Bishops to inquire about the chapter concerning counsel or consent regarding the procession; nevertheless, this obligation is not so absolute that it must always and everywhere be followed; as is also evident from the most recent resolutions of the Sacred Congregation of Rites, ibid. An exemption exists: In monasteries and also in colleges, where, according to the established regulations, both Regular superiors and confessors of the Regular canons of the same monasteries or colleges may hear the confessions of those secular individuals who are of the family and continuous boarders, but not of those who only serve them, page 303. Young men and boarders, living for their studies in Regular colleges, may be considered as belonging to the family of the monastery or college, so that, without the intervention of

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a parish priest, they may receive the Paschal Communion, Viaticum, and Extreme Unction from the superior Regular, ibid. The Right of Patronage: Any cleric or layperson, even one adorned with imperial dignity, is subject to an anathema if he should presume to usurp the goods of any church; and, beyond excommunication, he is deprived of the right of patronage if he is the patron of that church, page 42. SER ALIS 761: Having lost the right of patronage as a penalty, the patron wrongly presumes to pursue nominations for vacant benefices; since only benefactors, by pontifical grace, can enjoy this privilege, ibid. The Bishop must grant the institution presented by the legitimate patron, whenever nothing in the presentation obstructs, for which reason he should be rejected from the benefice as unworthy, p. 43. It is a well-established principle of law that if several conditions are added conjunctively in a foundation, all must be fulfilled, page 655. A lay judge cannot hear cases concerning the right of patronage, even if the judgment directly and immediately affects a temporal matter, because when a temporal matter is joined to a spiritual one, the more dignified draws the less dignified to itself, and the temporal matter ceases to be such as soon as it is joined to the spiritual. ibid. However, a lay judge may hear such cases when the right of patronage is treated incidentally and accessarily, whereas, principally, it concerns fiefs, legacies, and inheritances, to which the right of patronage is inseparable, ibid. By virtue of the convention entered into between Benedict XIV and Charles II, King of both Sicilies, ecclesiastical jurisdiction cases concerning benefices were reserved, except for royal or feudal rights of patronage and those cases whose judgment depends on an examination of whether...

[*Latin ed. p. 762*]

INDEX GENERALIS 762: Quod ad feudum pertinet, vel de universitate bonorum in aliis laicalibus patronatibus. Ibid. Ex lege 22 ff. de verbis: potest conversio in familiarum et gentilitium vel ei superaddere patronatum passivum, pagina 656. Significatione filii, appellatio saepe accipitur nepotibus et omnibus qui descendunt, continentur, ibid. Tacita aditio haereditatis, quae habetur cum quis se gerit pro haerede, a lege permittitur et valida habetur, ibid. Clericus a fundatore vocatus ab ipso Ordinario eligendus et instituendus est, etsi a patrono in praesentatione fuerit omissus, dummodo aliunde de ipsius idoneitate constet, ibid. Sacri Canones, sicut largiti sunt fundatoribus iuspationatus in parte activa nominandi, ita multum inclinant ad praeferendum sanguinem et descendentes ab eodem fundatoribus in altera parte passiva, ibid. Fundator cum consensu Ordinarii potest extra limen fundationis addere patronatum passivum in favorem familiae domusve suae, vel concivium vel collegialium ecclesiae, quia talem conditionem non iuri contrariam sed consonam pronunciavit, ibid. Cessante alterius praeiudicio, suis fere legibus, sive ante sive post episcopalem assensum, fundator haud adstringitur; qui valet ob id praesentare, clericum,

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qualitates in fundatione praescriptas non habent, aliaque onera et requisita abrogare aut patronatum haeredi.

Matrimonium: Quod metus causa gestum est, ratum haberi non potest; quia magis pati, quam agere, convincitur qui sub vi, aut sub metu aliquid promittit, pagina 102. Ideo Ecclesiae aequitas consulit vim aut metum patientibus in nuptiis ineundis, nullum declarando ab initio consensum praestitum in contractu matrimonii; quia matrimonium semel validum amplius dissolvi non posset, et individui libertas laederetur, et iniuriam passus nullum remedium haberet, pagina 103. Hinc provida vere dicitur lex, quae haud respicit an vim passus ore aut corde consenserit, sed nullum et inanem declarat ab initio eiusmodi consensum in tutelam humanae libertatis, ibid. Verum non omnis metus inficit consensum contrahentium; sed tantum quando malum, quod timetur, sit grave in se et certo immineat, non laevi aestimatione, sed certitudine morali, ibid. Reverentialis metus minis, saevitiis aut importunis parentum precibus iunctus, nullum reddit consensum in matrimonio; quia velle non creditur qui obsequitur imperio patris vel domini, ibid. Gravitas timoris oritur ex na-

[*Latin ed. p. 763*]

GENERAL INDEX: Causes of nullity, arising from the nature of either the impediments themselves, or those who are said to have suffered them, ibid. When the question concerns a matter of fact, and not of law, namely, whether a marriage ought to be declared invalid on account of a dispelling impediment, nothing more is to be done than to inquire and formally prove that the said impediment exists, and has not been removed by an apostolic dispensation, page 236. The impediment of consanguinity, or the prohibition of conjugal union, extends to the fourth degree; so that those who presume to marry within such a degree are not protected by length of years, nor can they plead it as a defense. ibid. Two things are required by law to formally prove consanguinity: namely, the faith of documents, and the testimony of relatives, or of two witnesses, without any exception of elders, ibid. The faith of documents is established for recognizing consanguinity from the parochial books; which, in matrimonial causes, are equivalent to public documents, as stated in the Tridentine Council, Session 24, Chapter 1, concerning reforms in marriage, and they fully constitute proof, ibid. The parochial books are of the greatest authority for proving consanguinity or affinity; for although the parochial book is not public, that is, written by the hand of a public notary, nevertheless, since, according to the Tridentine Council, the industry and faith of the parish priest are sufficient for writing such a book, undoubtedly faith must be given to such a book, ibid. Another argument for proving consanguinity is the testimony of witnesses; for by law, it is established that the sentence of divorce [the promulgation thereof] should not be delayed, if it is found by witnesses, without any exception of elders, that the first husband reaches

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the surviving spouse within the fourth degree of consanguinity. ibid. A relative and particular impediment invalidates a specific marriage contract, just as every marriage invalidates an absolute and total impediment, page 278. It seems more tolerable and honest to dissolve a marriage, than to provide, under the name and law of marriage, an occasion for incontinence, and to foster continuous sin: for prejudice and injury are thereby inflicted upon the same sacrament, ibid. Consenting fame demonstrates a violent presumption, especially if the matter concerns an impediment which is manifestly proclaimed by many, ibid. Only seven witnesses are required on the part affirming, when one affirms, and the other, a spouse, denies impotence, ibid. Certainty cannot be had in human actions, upon which a judgment is instituted; and therefore, it is sufficient to have probable certainty, p. 546.

[*Latin ed. p. 764*]

764 INDEX GENERALIS. Est probabilior sententia vel narratio quae a multis est data, quam illa quae a uno solo est data, ibidem. Si desit voluntas et scientia consentientis, nihil valet; quia nihil potest esse volitum sine praecognitione, et consensus, proprie loquendo, non est nisi de his quae fiunt ad finem, ibidem. Intentio in sacramentis est pervertita quando sacramentum fit derisorie, et sacramentum fieri non intelligitur; quae perversitas tollit veritatem sacramenti, ibidem. Defensor sacri vinculi requiritur quando res est de causis quae aguntur super validitatem, seu nullitatem, matrimonii; seu quando aliquis ex coniugibus instanciam porrigit super nullitatem matrimonii; non autem quando agitur de existentia eorumdem, pagina 553. Probatio status liberi facienda est sine strepitu iudicii a iudice ecclesiastico, prudenti iudicio, attentis omnibus circumstantiis locorum, temporum et personarum, pagina 554. Parochus proprius. Ad constituendum parochum proprium, causa ineundi matrimonii, requiritur domicilium, quod est locus perpetuae habitationis; vel quasi domicilium, quod est locus, in quo quis transire constituit maiorem anni partem, pagina 498. Ideo parochus ruralis non est proprius et verus parochus, quando rus itur causa recreationis vel pro rusticanis negotiis: et ideo nulliter apud eum matrimonium contrahitur, ibidem. Intentio pro constituendo quasi domicilio, colligi potest ex fine commorationis; et ideo si finis est precarius, et importans moram indeterminatam, et prorsus a voluntate commorantis dependentem, quasi domicilium non acquiritur, ibidem. Unanimis est omnium doctrina, perpetua sacrorum tribunalium praxi firmata, matrimonia coram Parocho eius loci, ubi quis rustican solet contracta, esse nulla, ibidem. Aliquis potest duplex habere domicilium et duplicem habitationis parochiam, quando aequaliter in utraque habitet; et potest coram parocho utriusque inire matrimonium, ibidem. Parochus quoad chorum. Ex Tridentino, parochus qui curam habet actualem animarum, excipitur a punctaturis in choro, et consideratur ceu praesens, quoties tempore horarum

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canonicarum sacramenta, aut alia sacra administret Christifidelibus sibi commissis; non excipuntur tamen canonici, penes quos sit tantum cura habitualis, pagina 34. Ex Conc. Trid. Sess. 22, cap. 3, De reform, dignitates vel canonici, quibus cura animarum imminet.

[*Latin ed. p. 765*]

INDEX G for the time during which they reside and minister in a curacy, as if present and having an interest in the divine affairs of cathedral and collegiate churches, page 285. The salvation of souls is the supreme law in the Church with regard to divisions, and according to this law, not only parishes, but also dioceses, are to be governed or regulated. page 79. For the union, division, or subdivision of parishes, a clear necessity or utility is required, ibid. This is especially verified whenever, due to the distance of places or the difficulty of roads, the parishioners cannot access the sacraments or hear the divine services without great inconvenience, ibid. When there is distance of places and difficulty of roads, new parishes should be established; provided that sufficient revenues are available to support the new parochial churches. ibid. According to the Council of Trent, Session 23, chapter 1, pastors are bound by divine command to know their flocks, and to feed them with the word of divine preaching, the administration of the sacraments, and by the work and example of all good things, ibid. Antipathy, quarrels, or hatreds between regions or towns within the same parish are a sufficient cause for the division or subdivision of the parish, page 765. The erection of new parishes, and this has been the constant practice of the Holy See, ibid. For the union, division, or suppression of any churches, even parochial ones, it may be proceeded with whenever the parochial churches, due to their own poverty, cannot be provided with a pastor, and their status cannot be maintained with dignity. ibid. It may also be proceeded with for their union, division, or suppression whenever they are so dilapidated and ruined that they cannot be restored or repaired, page 80. From the Council of Trent, Session 24, chapter 13, concerning the safe salvation of souls, a permanent and particular pastor must be assigned to each parish, who may know them and from whom alone the sacraments may lawfully be received, ibid. With regard to this, the pastor must serve the parochial church, not through assistants or vicars, but through himself; both because not everything is done in chapels, to which pastors are bound by common and Tridentine law, and because, especially in parishes, the person chosen is considered of elect and industrious character, ibid. This is all the more to be observed, since the matter of removable chaplains is a matter of opinion, because they are considered by law as mercenaries and inexperienced, and they improperly feed the flocks that are not their own.

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ibid. Formerly, with the Holy See,

[*Latin ed. p. 766*]

766 GENERAL INDEX: As is stated in the constitution of the Vicars, it was intended that the needs of the parishes be met more through the actions of the Vicars than through the division of parishes; but with the passage of time, this has been abandoned, and the Most Holy Congregation itself has come to a different opinion, ibid. The Penitentiary: It is sufficient that the age of forty years has been reached in order to receive the office of Penitentiary; and it is not required that the one who applies for this office has completed or even reached the age of forty years, page 610. The practice of the Roman Church has interpreted the Council of Trent, Session 23, chapter 12, regarding the age of those to be promoted to the sacred orders, in such a way that it is sufficient that the required years for receiving each order have only begun, even by half a day or a single hour, ibid. The Funeral Portion: By law, the parish to which a deceased person belonged is due a portion of the funeral expenses, even if the person is buried in another church, namely, one-fourth of all the offerings, and of the candles that are lit on the day of the funeral, around the body or even on the altars, page 22. By a reasonable and legitimate custom of the place, it can be established that the funeral portion due to the parish of the deceased should be one-third, or even one-half, of all that is offered by the heirs of the deceased, on the occasion of the funeral, provided that, from the beginning, it was actually one-fourth. ibid. Sodalities: A sodality is not undeservedly removed or suppressed by the Bishop if it appears that its purpose, which is, for the most part, mutual charity and piety towards God, has failed, page 596. Sodalities that wish to enjoy a legitimate life must strictly adhere to their own statutes, as guiding norms, and must be subject to the Bishop; to whom it pertains to approve the statutes, to confirm or reject the officials elected by the members, ibid. Taxes for the Seminary: According to the Constitution of Benedict XIII, which begins "Creditae Nobis," a tax in favor of the seminary must be imposed on all benefices, as well as on the property of Regular Canons; except for those benefices or properties that have been expressly exempted by the Holy See, page 254. This tax must be neither less than three scudi, nor greater than five, for each hundred of annual revenue, ibid. The annual revenue, to which the tax is applied, is that which remains after deducting necessary expenses.

[*Latin ed. p. 767*]

GENERAL INDEX for the understanding of profits, and the burdens imposed before the Council of Trent, see there. To determine the annual value of benefices, it is not necessary to consider the accidental increase in revenue of one or another year, 767 but a calculation must be made over a period of ten years, see there. Taxes levied on the revenues of seminaries

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or other goods constitute a true debt, which those burdened must pay both in civil and ecclesiastical courts, see there.

IMPRIMATUR Fr. Raphael Pierotti, Order of Preachers, S.P.A., Master.

IMPRIMATUR Julius Lenti, Patriarch of Constantinople, Vice-Delegate.

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